Counsel's Office, White House

Klinger, Richard

Binder – Judicial, US Attorney, and US Marshal Selection Meeting with the President, -3/16/2006

THE WHITE HOUSE

WASHINGTON

JUDICIAL, UNITED STATES ATTORNEY, UNITED STATES MARSHAL, AND
UNITED STATES SENTENCING COMMISSION SELECTION MEETING WITH THE PRESIDENT
March 16, 2006

TAB 1 — Thomas M. Hardiman of Pennsylvania
Judge on the United States Court of Appeals for the Third Circuit

TAB 2 — (b)(6)
Judge on the United States Court of Appeals for the Third Circuit

TAB 3 — Bobby E. Shepherd of Arkansas
Judge on the United States Court of Appeals for the Eighth Circuit

TAB 4 — Neil M. Gorsuch of Virginia
Judge on the United States Court of Appeals for the Tenth Circuit

TAB 5 — Jerome A. Holmes of Oklahoma
Judge on the United States Court of Appeals for the Tenth Circuit

TAB 6 — Kimberly Ann Moore of Virginia
Judge on the United States Court of Appeals for the Federal Circuit

TAB 7 — (b)(6)
Judge on the United States District Court for the Southern District of California

TAB 8 — Marcia Morales Howard of Florida
Judge on the United States District Court for the Middle District of Florida

TAB 9 — Leslie H. Southwick of Mississippi
Judge on the United States District Court for the Southern District of Mississippi

TAB 10 — Gregory K. Frizzell of Oklahoma
Judge on the United States District Court for the Northern District of Oklahoma

TAB 11 — Nora Barry Fischer of Pennsylvania
Judge on the United States District Court for the Western District of Pennsylvania

TAB 12 — John Preston Bailey of West Virginia
Judge on the United States District Court for the Northern District of West Virginia

TAB 13 — Deborah J. Rhodes of Alabama
United States Attorney for the Southern District of Alabama

TAB 14 — R. Alexander Acosta of Florida
United States Attorney for the Southern District of Florida

TAB 15 — Phillip John Green of Michigan
United States Attorney for the Southern District of Illinois

TAB 16 — George E.B. Holding of North Carolina
United States Attorney for the Eastern District of North Carolina

TAB 17 — (b)(6)
United States Marshal for the District of Massachusetts

TAB 18 — Dabney Langhorne Friedrich of Virginia
Member of the United States Sentencing Commission

4

THE WHITE HOUSE

WASHINGTON

March 16, 2006

MEMORANDUM FOR THE PRESIDENT

FROM: HARRIET MIERS

SUBJECT: JUDICIAL SELECTION

The White House Judicial Selection Committee and I recommend that you approve for possible nomination to the Senate the following individual:

Neil M. Gorsuch, of Virginia, to be United States Circuit Judge for the Tenth Circuit, vice David M. Ebel, retired.

Upon your approval all necessary clearances will be initiated. An announcement of intention to nominate will be made as soon as the clearances have been obtained. Nomination to the Senate will be forwarded immediately following the announcement.

APPROVE: _____ DISAPPROVE: _____

PREPARED BY: Leslie Fahrenkopf

NAME:	Neil M. Gorsuch				
NAME & STATE:	Neil M. Gorsuch of Virginia				
POSITION:	United States Circuit Judge for the Tenth Circuit				
TYPE: *(bold one)*	PAS PA SES	FT PT		TERM:	LIFE
VICE:	David M. Ebel	GENDER:	M	DOB:	(b)(6)
BIRTHPLACE:	Denver, Colorado	PARTY:		SSN:	
ETHNIC HERITAGE:			RACE:		
CHILDREN:	2		SPOUSE:	Marie Louis Gorsuch	
VOTING CITY, STATE *(in 2004)*:	Vienna, Virginia		HOME STATE:	Virginia	

CURRENT HOME ADDRESS:	(b)(6)	CURRENT POSITION AND WORK ADDRESS:	Principal Deputy to the Associate Attorney General U.S. Department of Justice Room 5706 Washington, DC 20530
HOME PHONE:	(b)(6)	WORK PHONE:	(202) 305-1434
EDUCATION:	Oxford University, D. Phil. Harvard Law School, J.D. *cum laude.* Columbia University, B.A. with honors.	AWARDS:	Marshall Scholar. Harry S. Truman Scholar.
PREVIOUS POSITIONS HELD:	Partner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., 1998-2005. Associate, 1995-1997. Law Clerk, The Honorable Byron R. White and Honorable Anthony M. Kennedy, U.S. Supreme Court, 1993-1994. Law Clerk, The Honorable David B. Sentelle, U.S. Court of Appeals for the District of Columbia, 1991-1992.	MILITARY SERVICE:	

PREVIOUS PRESIDENTIAL APPOINTMENTS:

President approved: _____

Security package sent: _____

Presidential Personnel, White House Office of

Bullock, Katja

Gorsuch, Neil

NEIL M. GORSUCH

February 28, 2005

Dear Julie,

Thank you for taking the time to meet with me and for all your help and support. I'm really looking forward to the chance to serve this President and any of the opportunities we discussed would be wonderful.

I hope our paths cross again soon.

Warm regards,

Neil Gorsuch

Hon. Julie Myers
Office of Presidential Personnel
The White House
1600 Pennsylvania Ave NW
Washington DC 20500

MAR 0 9 2005

172

(9)(q)

Presidential Personnel, White House Office of

Bullock, Katja – Agency Files - Candidates

Gorsuch, Neil

PPO AD jm DATE RECEIVED BY OPA: _____ DATE DUE TO PPO: _____ POTUS Mtg. Date (if applicable): _____

NAME: Gorsuch, Neil

HOME/VOTING ADDRESS: McLean, VA

POTENTIAL AGENCY/POSITION: DOJ / DAAG - Associate's Office

____PAS ____PA X SES ____SKC ____B/C

X PERMANENT ____ TEMPORARY

REC 1: OPA POSITION OF REC 1: _____

REC 2: _____ POSITION OF REC 2: _____

POLITICAL CHECK:

Notes

NA VOTE CHECK

R FEC W

____ CONFIRM RECOMMENDER

____ B/C STATE LEADERSHIP

Talked to: _____ Position: _____ Approve (Y/N): ____
Notes:

Talked to: _____ Position: _____ Approve (Y/N): ____
Notes:

V APPROVE ____ DENY Sam Taylor (CRF) OFFICE OF POLITICAL AFFAIRS W RANK 4/12/05 DATE

1 – Known to OPA
2 – Unknown to OPA – full political check completed
3 – Unknown to OPA – abbreviated political check
4 – unknown to OPA – no political check completed because _____

Name, Last	First	Middle	Title	Occupation
GORSUCH	NEIL	M.		Attorney

Position Sought	Position	Firm / Agency
DAAG-OLC, DOJ	**Partner** 1998 – Present	Kellogg, Huber, Hansen, Todd & Evans

Notables

- **Gorsuch's Mother, The Late Anne M. Gorsuch Burford, Was Former Environmental Protection Agency Director During The Reagan Administration.**
- **In A *National Review* Online Article, Gorsuch Criticized Excessive Litigation, Claiming "American Liberals Have Become Addicted To The Courtroom."** "There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, … American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education. This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide." (*National Review* Online, 2/7/05) (Article Attached)
- **In A Lengthy *Legal Times* Article, Gorsuch Argued The Supreme Court Should Clarify Securities Fraud Laws.** "To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes easy answers are the best

solution to easy cases." (*Legal Times*, 1/31/05) (Article Attached)

- **Gorsuch Commented On Securities Fraud Case, Regarding Question Of Whether One Can Sue For Fraud Despite Not Suffering Financial Loss.** "If you buy a company's stock at $10 a share, then learn the company inflated the stock's value, should you be able to sue for securities fraud – even if you sold the stock with no financial loss? This is the question going before the U.S. Supreme Court Wednesday (Jan. 12) in a case involving former San Diego drug company Dura Pharmaceuticals Inc. and investors who say they were victimized by Dura's misrepresentations about its stock. The high court's ruling could affect anyone who buys or sells stocks, or anyone who invests in mutual funds that buy and sell stocks on their behalf. 'This is a case of extreme importance in securities law,' said Neil Gorsuch, an attorney representing the U.S. Chamber of Commerce, which is siding with Dura in the case known as Dura Pharmaceuticals Inc. vs. Michael Broudo. 'The whole question is whether damages should be tied to (money) actually lost, or whether you're going to permit damages ... not tied to shareholders' actual losses.'" (*Copley News Service*, 1/5/05)

- **Gorsuch Signed Letter Criticizing Clerks Who Disclosed Confidential Information About Supreme Court Deliberations Regarding The 2000 Election.** "According to an article recently published in *Vanity Fair* magazine [David Margolick, Evgenia Peretz, and Michael Shnayerson, 'The Path to Florida,' *Vanity Fair*, Oct. 2004, at 310], a number of former U.S. Supreme Court law clerks, who served during the Court's October 2000 term in which Bush v. Palm Beach County and Bush v. Gore were decided, intentionally disclosed to a reporter confidential information about the Court's internal deliberations in those cases. If true, these breaches of each clerk's duty of confidentiality to his or her appointing justice -- and to the Court as an institution – cannot be excused as acts of 'courage' or something the clerks were 'honor-bound' to do. ... To the contrary, this is conduct unbecoming any attorney or legal adviser working in a position of trust. Furthermore, it is behavior that violates the Code of Conduct to which all Supreme Court clerks, as the article itself acknowledges, agree to be bound. Although the signatories below have differing views on the merits of the Supreme Court's decisions in the election cases of 2000, they are unanimous in their belief that it is inappropriate for a Supreme Court clerk to disclose confidential information, received in the course of the law clerk's duties, pertaining to the work of the Court. Personal disagreement with the substance of a decision of the Court [including the decision to grant a writ of certiorari] does not give any law clerk license to breach his or her duty of confidentiality or 'justif[y] breaking an obligation [he or she would] otherwise honor.'" (*Legal Times*, 9/27/04)

- **Gorsuch Praised Ruling Awarding Columbia Hospital For Women Medical Center $18.2 Million In Damages.** "A D.C. Superior Court jury awarded the defunct Columbia Hospital for Women Medical Center $18.2 million in damages, agreeing with the hospital that a malpractice insurance company had overcharged for premiums and encouraged doctors to practice elsewhere. ... The jury rejected claims by NCRIC in a 2000 lawsuit that Columbia had failed to pay $3 million in premiums and interest. ... The 136-year-old hospital closed in May 2002, citing severe financial problems. Columbia attorney Neil M. Gorsuch said of the verdict, returned on Friday: 'We feel that justice was done and are gratified that the jury, after a 21/2-week trial and significant deliberations, rendered a verdict confirming that NCRIC tortiously interfered with the operations of Columbia Hospital for Women.'" (*Legal Times*, 4/26/04)
- **In A Letter To The Editor, Gorsuch Criticized John Barrett For Accusing Court Overseeing Independent Counsel Of A "Partisan" Agenda.** "The March 9 front-page article on the three- judge panel overseeing the independent counsel law noted that the court recently denied the attorney fee applications of some targets in the Whitewater investigation on the ground that the Justice Department would have examined their actions even without the independent counsel statute. In the article, John Barrett, who worked in the independent counsel's office during the Iran-contra investigation, charges that the court's rationale is a cover for a 'partisan' agenda because the Justice Department investigated violations of the Boland Amendment before independent counsel Lawrence Walsh was appointed, yet the court approved some fee awards for people caught up in the Iran-contra investigation. But the article nowhere discloses a fact that precludes such claims of partisanship: None of the independent counsels in the Iran-contra affair contested fee applications arising from that investigation on the ground that the Justice Department already had started an investigation of Boland Amendment violations. If Mr. Walsh's team (on which Mr. Barrett served) knew of such 'facts' and failed to share them with the court, the fault plainly lies there. Courts rule only on the evidence that the parties present. The article also said that the presiding judge of the panel, David Sentelle (for whom I clerked years ago), named his daughter Reagan after the president who appointed him to the court. But Judge Sentelle's daughter was born in 1970, and Ronald Reagan appointed Mr. Sentelle to the court in 1985, when his daughter was 15. This is at least the second time *The Post* has printed this apocryphal story. And by the way, the article was kind to enough to say that Mr. Sentelle is 59; he is, in fact, 61." (*The Washington Post*, 3/18/04)
- **Gorsuch Claimed Both Parties Impose Litmus Tests On Judicial Nominees, Which "Serves To Weaken The Public Confidence In The Courts."** "Today,

there are too many who are concerned less with promoting the best public servants and more with enforcing litmus tests and locating unknown 'stealth candidates' who are perceived as likely to advance favored political causes once on the bench. Politicians and pressure groups on both sides declare that they will not support nominees unless they hew to their own partisan creeds. When a favored candidate is voted down for lack of sufficient political sympathy to those in control, grudges are held for years, and retaliation is guaranteed. Whatever else might be said about the process today, excellence plainly is no longer the dispositive virtue, as it was to President Kennedy. The facts are undeniable. Today, half of the seats on the Sixth Circuit remain unfilled because of partisan bickering over ideological 'control' of that circuit. The D.C. Circuit operates at just two-thirds strength. Almost 20 percent of the seats on the courts of appeals and nearly 100 judgeships nationwide are vacant. The administrative office of the U.S. Courts has declared 32 judicial vacancy 'emergencies' in courts where filings are in excess of 600 cases per district judge or 700 cases per appellate panel. Meanwhile, some of the most impressive judicial nominees are grossly mistreated. Take Merrick Garland and John Roberts, two appointees to the U.S. Court of Appeals in Washington, D.C. Both were Supreme Court clerks. Both served with distinction at the Department of Justice. Both are widely considered to be among the finest lawyers of their generation. Garland, a Clinton appointee, was actively promoted by Republican Sen. Orrin Hatch of Utah. Roberts, a Bush nominee, has the backing of Seth Waxman, President Bill Clinton's solicitor general. But neither Garland nor Roberts has chosen to live his life as a shirker; both have litigated controversial cases involving 'hot-button' issues. ... Responsibility for the current morass does not rest with any one party or group; ample blame can be doled out all around. But litmus tests, grudge matches and payback are not the ways forward. Excellence is. As Lloyd Cutler, White House counsel to President Clinton, explained in testimony to the Senate Judiciary Committee last year, 'to make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong as a matter of political science; it also serves to weaken the public confidence in the courts.'" (*United Press International*, 5/4/02)

- **In A 2000 Publication Titled "The Right To Assisted Suicide And Euthanasia," Gorsuch Said The "Legal History Of Assisted Suicide And Euthanasia ... Concludes That Little Historical Antecedent Supports Treating Them As 'Rights.'"** (Questia Online Library Website, http://www.questia.com/PM.qst?a=o&d=5001776263, Accessed 3/15/05)
- **Gorsuch Represented Firm Awarded $350 Million From U.S. Tobacco.** "CASE TYPE: antitrust CASE: Conwood Co. L.P. v. U.S. Tobacco Co., No.

5:98-CV-108-R (W.D. Ky.) PLAINTIFF'S ATTORNEYS: Richard C. Roberts of Paducah, Ky.'s Whitlow, Roberts, Houston & Straub; Mark C. Hansen, Neil M. Gorsuch, Michael J. Guzman and Benjamin A. Powell of Washington, D.C.'s Kellogg, Huber, Hansen, Todd & Evans DEFENSE ATTORNEYS: Neal R. Stoll, James A. Keyte, Chris T. Athanasia, Matthew Barnett and Rachel Mariner of New York's Skadden, Arps, Slate, Meagher & Flom; and John S. Reed II and Ridley M. Sandidge of Louisville, Ky.'s Reed Weitkamp Schell & Vice ... On March 28, a Paducah, Ky., jury awarded Conwood $350 million. This was trebled automatically, under federal antitrust law, and entered at $1.05 billion the following day. U.S. Tobacco filed motions for remittitur, a new trial and judgment as a matter of law; these were denied on Aug. 10. The verdict has been appealed to the U.S. Court of Appeals for the 6th Circuit, said defense counsel Neal R. Stoll: 'We do not believe this is a valid claim.'" (*The National Law Journal*, 2/19/01)

- **Gorsuch Represented Plaintiffs Who Brought Class Actions Against Banks, Alleging They Had Been Defrauded.** "The U.S. Court of Appeals for the Eleventh Circuit, in a case that has ramifications concerning class actions brought against banks and other financial institutions, affirmed the denial of class certification to a potential nationwide RICO class of as many as 10 million claimants. The court's two-page order, issued on June 9, characterized the 52-page opinion written by District Judge William T. Moore, Jr., as 'exhaustive.' Judge Moore, in a case of first impression, denied class certification to the plaintiffs on, July 11, 1996 (see CRR, Aug. 27, 1996, p. 7). The plaintiffs claimed they had been defrauded when they obtained tax refund anticipation loans from various banks through H&R Block and other 'electronic filers' of individual tax returns. The Judge held that the need for individual proof of reliance to establish each class member's RICO claim rendered that claim unsuited for class treatment because common issues would not predominate over individual issues and the case would not be manageable as a class action. ... Buford, et al. v. H&R Block, Inc., et al., 11th Cir., No. 96-8969, 6/9/97 Counsel for Plaintiffs: Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, Ga., Mark C. Hansen, Jeffrey A. Lamken, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washing-ton, D.C. Counsel for Defendants: Burt M. Rublin, Alan S. Kaplinsky and Walter M. Einhorn, Jr. of Ballard Spahr Andrews & Ingersoll, Philadelphia, Pa." (*Civil RICO Report*, 7/23/97)
- **Gorsuch Said Term Limits Are Constitutional.** "Cato's position, laid out in a study by attorneys Neil Gorsuch and Michael Guzman, is that the limits are constitutionally permissible under the doctrine that states can regulate the manner in which elections are held. 'In recent years states have enacted procedures, and the Supreme Court has upheld them,' says Mr. Pilon. 'The state has a right to

regulate.'" (*The National Law Journal*, 11/16/92)

- **In A *Wall Street Journal* Op-Ed, Gorsuch Argued The Constitutionality Of Term Limits.** "Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: 'No, none, no legal case can be made for them.' ... We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved. ... the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers – a desire to secure broad political participation and promote a representative legislature." (*The Wall Street Journal*, 11/4/92) (Op-Ed Attached)

- **Gorsuch Represented Company That Claimed Contract Was Terminated Because They Refused To Agree To Bribery Scheme; Claim Was Rejected Due To Only Indirect Injury.** "The Southern District of New York held that a company whose contract was allegedly terminated because the company failed to agree to a RICO bribery scheme was only injured indirectly by the scheme and therefore had no standing. Plaintiffs J.S. Service Center Corporation and Sercenco, S.A. (collectively Sercenco) alleged that General Electric Technical Services Company, Inc. and General Electric Company (collectively GE) engaged in a scheme to bribe officials at an electric plant in Peru. ... J.S. Service Center Corp. v. General Electric Technical Services Company, Inc., S.D.N.Y. 95 Civ. 3979, 7/17/96 Opinion by District Judge William C. Conner Counsel for Plaintiffs: Alan G. Blumberg, Joy Feigenbaun, Martin Bienstock, Linda Baldwin, Szold & Brandwen, P.C., New York, N.Y. Counsel for Defendants: Mark C. Hanson, Jeffrey A. Lamken, Neil M, Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, D.C., E. Scott Gilbert, James DeVine, Eduardo L. Buso, New York, N.Y." (*Civil RICO Report*, 9/30/96)

- **Gorsuch Said The Supreme Court Interprets Qualifications Clauses Of The Constitution Narrowly.** "The Supreme Court has generally struck down ballot access restrictions only if they discriminate against the poor or minor parties. In 1974, in Storer v. Brown, the court upheld a California law barring independents from congressional races who had belonged to another party within 11 months of the election. The court dismissed arguments that this added another qualification for Congress as 'wholly without merit.' A decade later, in Clements v. Fashing, the court upheld a Texas 'serve-your-term' law barring incumbents from seeking

another office until their current terms had expired. The court found the two-year waiting period mandated by the law a 'de minimus burden.' The court has also found constitutional state laws that barred entire groups of people from holding office. The Hatch Act, passed by Congress in 1939, prohibits most federal employees from running for any elective office. In 1973, the court upheld an Oklahoma law that imposed the Hatch Act's curbs on state employees. A forthcoming study by Neil Gorsuch and Michael Guzman for the Cato Institute finds that the Supreme Court has chosen to construe the qualifications clauses of the Constitution very narrowly. 'Indeed, it has used these clauses to strike down a legislative act only twice,' they note. 'By contrast, the Court has put Article I, Section 4 to ample use,' and allowed states a largely free rein in writing their own election laws to reflect local preferences." (*The Wall Street Journal*, 8/5/92)

- **As An Attorney, Gorsuch Has Been Cited In Many Court Cases.** (See Attached Pages)

Flags

(b)(6)

HIGHEST PREVIOUS SALARY CALCULATION FORM

CANDIDATE: Neil Gorsuch

HIGHEST PREVIOUS SALARY: (b)(6)

PROPOSED GS LEVEL: $149,200 - SES

PERCENT INCREASE: N/A

EXAMPLE:

Highest previous salary: 60,000

Proposed GS Level: GS-14 (78,265)

Calculation:

78,265
-60,000
18,265

Divide the difference by the highest previous salary for percent increase:

18,265/60,000= .3044 = 30%

U. S. Department of Justice

Office of the Attorney General

Washington, D.C. 20530

DATE: April 6, 2005

TO: Amanda Becker

Telephone No. (202) 456-7149 Fax No. (202) 456-6615

FROM: John Eddy
Deputy White House Liaison

Telephone No. (202) 616 - 7740 Fax No. (202) 616 - 5117

TRANSMISSION CONTAINS 4 SHEETS INCLUDING THIS COVER SHEET

****

SPECIAL NOTE(S) Attached is a PPO form for Niel Gorsuch.

DOB:
SS#:

(b)(6)

NEIL M. GORSUCH

(b)(6)
office: (202) 326-7978
home: (b)(6)
e-mail: ngorsuch@khhte.com

(b)(6)

EXPERIENCE

KELLOGG, HUBER, HANSEN, TODD & EVANS, Washington, D.C.
Partner, 1998-present; Associate, 1995-1997.
Representative matters include:

Teachers' Retirement System of Louisiana v. Regal Entertainment, lead counsel in the successful defense of a derivative suit challenge to a $750 million corporate recapitalization.

Conwood v. UST, trial counsel for plaintiff in an antitrust case leading to a $1.05 billion judgment.

NCRIC v. Columbia Hospital, lead trial counsel for defendant hospital in a case where the jury rejected plaintiff's claims and awarded defendant $18.2 million for its counterclaims.

Automall v. American Express, lead trial counsel for American Express in a $78 million trial.

Zachair v. Driggs, lead trial counsel for plaintiff in an abuse of process and fraud case that resulted in a $4 million verdict.

In re Qwest Communications International, Inc. Securities Litigation, defending former chairman and other directors in securities fraud class actions, derivative lawsuits, and governmental investigations.

Z-Tel Communications v. SBC Communications, defending SBC in a $1.5 billion antitrust and RICO suit brought by a rival.

Have written briefs in a variety of Supreme Court cases, including: *Quill v. Vacco* and *Washington v. Glucksberg* (assisted suicide); *Felzen v. ADM* and *Devlin v. Scardellitti* (concerning class action and derivative suit reform); *Dura Pharmaceutical v. Broudo* (concerning securities fraud litigation).

Representative clients include: U.S. Chamber of Commerce; Council of Institutional Investors; directors of Qwest Communications; Regal Entertainment Group; SBC Communications; Travelex; American Express; Conwood Company; Hyatt Hotels.

SUPREME COURT OF THE UNITED STATES, Washington D.C.
Law clerk to Justice Byron R. White (Retired) and Justice Anthony M. Kennedy, 1993-94.

U.S. COURT OF APPEALS, D.C. CIRCUIT, Washington, D.C.
Law clerk to U.S. Circuit Judge David B. Sentelle, 1991-92.

EDUCATION

OXFORD UNIVERSITY, Oxford, England.
D.Phil. in legal philosophy.
British Marshall Scholar.
Dissertation to be published by Princeton University Press.
John M. Finnis, supervisor.
Rowed crew for University College.

HARVARD LAW SCHOOL, Cambridge, MA.
J.D. 1991 *cum laude*.
Harry S. Truman Scholar (100 scholars chosen annually by U.S. government).
Harvard Journal of Law & Public Policy, Senior Editor.
Head Teaching Fellow, Harvard College political philosophy course.
Represented indigent criminal defendants in Boston courts.

COLUMBIA UNIVERSITY, New York, NY.
B.A. 1988, Political Science, with honors (G.P.A. 3.95).
Phi Beta Kappa, early selection (top 1% of class).
Founded and edited student newspaper, *The Federalist Paper*.
Columnist for daily student newspaper, *The Spectator*.
Elected Class Marshal by faculty.
Nachems senior honor society, selected by peers.
Graduated in three years.

GEORGETOWN PREPARATORY SCHOOL, North Bethesda, MD.
National high school debate champion.
President of the student body.
Hamilton Medal for service to the school.

ARTICLES, SPEECHES

No Loss, No Gain, Legal Times, Jan. 31, 2005 (arguing for reform of class action securities litigation); *Justice White and Judicial Excellence*, distributed nationally by UPI (May 2002) (concerning the filibuster of judicial nominees); *Liberals and Lawsuits: Too Much Reliance on Litigation Is Bad for the Courts and the Democrats*, National Review Online, Feb. 7, 2005 (concerning the judicial nomination process and litigation reform); *The Right to Assisted Suicide and Euthanasia*, 23 Harvard Journal of Law and Public Policy 599 (2000) (arguing against the legalization of assisted suicide); *The Legalization of Assisted Suicide and the Law of Unintended Consequences*, 2004 Wisconsin Law Review 1347 (2004). Co-author: *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits*, 20 Hofstra Law Review 341 (1991); Policy Analysis on Term Limits, Cato Institute Policy Analysis No. 178 (1992); *The Constitutional Case for Term Limits*, Wall Street Journal, Nov. 14, 1992. Work in progress: book for Princeton University Press. Recent speeches and panels include: U.S. Federal Trade Commission (concerning class action reform); Wisconsin State Bar Association (concerning oral advocacy).

ASSOCIATIONS

Term Member, Council on Foreign Relations. American Bar Association (Litigation and Antitrust sections). John Carroll Society. Oxford Society of Washington, D.C. Fahy American Inn of Court (1998-2000). Listed in Who's Who in America, Who's Who in American Law.

POLITICAL

Ohio Bush-Cheney volunteer, 2004 campaign (oversaw legal teams in Eastern and Central Ohio counties). Co-Director, Virginia Lawyers for Bush-Cheney. Bush-Cheney Marshal. RNC Bronco. Republican National Lawyers Association, Co-Chairman of the Judicial Nominations Task Force (2001-02). Cited for Distinguished Service to the United States Senate for work in support of President Bush's judicial nominees by the Senate Republican Conference. Worked on Republican campaigns since 1976, including Reagan-Bush, Bush-Quayle.

PERSONAL

Born Denver, Colorado, (b)(6). Married; two daughters. Enjoy fly fishing, skiing, tennis, trap/skeet shooting.

U. S. Department of Justice

Office of the Attorney General

Washington, D.C. 20530

DATE: April 19, 2005

TO: Amanda Becker

Telephone No. (202) 456-7149 Fax No. (202) 456-6615

FROM: John Eddy
Deputy White House Liaison

Telephone No. (202) 616 - 7740 Fax No. (202) 616 - 5117

TRANSMISSION CONTAINS 5 SHEETS INCLUDING THIS COVER SHEET

****

SPECIAL NOTE(S) Attached is the final paperwork for Neil M. Gorsuch.

Request for Senior Executive Service Appointing Authority

Agency Name: DEPARTMENT OF JUSTICE **Print Date:** APR-14-2005

POC: SHERRY A. MAHONEY **Phone:** (202) 514-6794 **Fax:** (202) 514-0673

Request No.: DJ05I0098 **Type:** APPOINTMENT **Temporary Allocation:** No

Extension: No **Duration:** **ES Pay Level:** $149,200

Candidate NEIL M GORSUCH

Position No.: DJESC1151 **Title:** PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL

Organization Name: OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

Recruited From:

GEO Location: WASHINGTON

Current Title: **Proposed Title:**

SES Endorsement Statement

I endorse the above request made to the Office of Personnel Management. I certify that the position is a General position and certify that the candidate meets the professional/technical, executive and managerial qualifications for the position.

Name/Title: Jeanne N. Raymos, Assistant Director Leadership Effectiveness Group Phone: (202) 514-6794

Signature: Date Signed:

Agency White House Liaison

Name: Jan E. Williams Phone: (202) 514-2927

Signature: Date Signed: 4/18/05

OPM USE ONLY

Check the appropriate box(es)

- ☐ Your request for a new noncareer appointment authority, reassignment or pay level change is: ☐ Approved ☐ Approved with Modification* ☐ Disapproved ☐ Returned without Action
- ☐ Your request for a limited term emergency appointment authority for the duration of _____ is:
- ☐ Your request for temporary space allocation is:

* Modification

Number of non-career allocations: _____ Percent of SES space allocation: _____ %

OPM W/H Liaison: _____ Date Signed: _____

OPM Approving Official: _____ Date Signed: _____

Chief of Staff, OPM

FAX: 202-606-2126 **ATTENTION: Executive Resources Staff, Room 6484**

POSITION DESCRIPTION (Please Read Instructions on the Back)

1. Agency Position No.: DJES 01151

2. Reason for Submission: [ ] Redescription [X] New [ ] Reestablishment [ ] Other
Explanation (Show any position replaced.)

3. Service: [X] Hqtrs. [ ] Field

4. Employing Office Location: Washington, DC

5. Duty Station: Washington, DC

6. OPM Certification No.:

7. Fair Labor Standards Act: [X] Exempt [ ] Nonexempt

8. Financial Statements Required: [X] Executive Personnel Financial Disclosure [ ] Employment and Financial Interests

9. Subject to IA Action: [ ] Yes [X] No

10. Position Status: [ ] Competitive [ ] Excepted (Specify in Remarks) [X] SES (Gen.) [ ] SES (CR)

11. Position is: [ ] Supervisory [X] Managerial [ ] Neither

12. Sensitivity: [ ] 1-Non Sensitive [X] 3-Critical Sensitive [ ] 2-Noncritical Sensitive [ ] 4-Special Sensitive

13. Competitive Level Code:

14. Agency Use:

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. U.S. Office of Personnel Management						
b. Department, Agency or Establishment	Principal Deputy Associate Attorney General	ES	905		DM	5/24/02
c. Second Level Review						
d. First Level Review						
e. Recommended by Supervisor or Initiating Office						

16. Organizational Title of Position (if different from official title):

17. Name of Employee (if vacant, specify): Neil Gorsuch

18. Department, Agency, or Establishment: Department of Justice

a. First Subdivision: Office of the Associate Attorney General

b. Second Subdivision:

c. Third Subdivision:

d. Fourth Subdivision:

e. Fifth Subdivision:

19. Employee Review—This is an accurate description of the major duties and responsibilities of my position.

Signature of Employee (optional):

20. Supervisory Certification. *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

a. Typed Name and Title of Immediate Supervisor:
Jay B. Stephens
Associate Attorney General

Signature: J.B. Stephens Date: 5/22/02

b. Typed Name and Title of Higher-Level Supervisor or Manager (optional):

Signature: Date:

21. Classification/Job Grading Certification. *I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the U.S. Office of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.*

Typed Name and Title of Official Taking Action:
Valerie M. Willis, Assistant Director
Executive Resources Group

Signature: Date: 5/22/02

22. Position Classification Standards Used in Classifying/Grading Position:

Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the U.S. Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the U.S. Office of Personnel Management.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)										
b. Supervisor										
c. Classifier										

24. Remarks:

25. Description of Major Duties and Responsibilities (See Attached)

PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL
ES-905

INTRODUCTION

The incumbent of this position serves as the Principal Deputy to the Associate Attorney General (ASG). The Principal Deputy functions as the primary assistant and alter ego to the ASG in all areas of the ASG's responsibilities. As such, the Principal Deputy exercises full responsibility for carrying out all policy, programmatic, legal, and managerial matters assigned or required to assure the Department's effective and efficient operations. This position is established to advise and assist the ASG, key Presidential appointees, and other senior staff in fulfilling the Department's mission.

DUTIES AND RESPONSIBILITIES

1. Assists the ASG in the day-to-day execution of his/her duties and responsibilities. Participates in the formulation, development, and execution of policies and programs.

2. Consults with the ASG and other organizational heads to relay policies of the ASG and their possible implications on the work of the legal divisions.

3. Represents the ASG in high level discussions involving policy and program operations, including conferring with high level officials of other Federal agencies, departments, and the White House.

4. Provides advice and assistance to the ASG, the Deputy Attorney General, the Attorney General, and other Deputy Associate Attorney General's concerning cases which come under the purview of the ASG. When significant controversy develops concerning policy or litigative strategy, the incumbent is responsible for advising the ASG of a resolution of the matter.

5. Establishes liaison and represents the ASG in an effort to improve the services provided by the Department. In this capacity, meets with high level officials of other agencies in order to explain Departmental policies and to better understand agencies' problems concerning matters undertaken by the Department. Recommends changes to the ASG concerning services provided by the Department. These changes may be in the form of changes in litigative strategy or organizational changes.

6. Reviews allocation of responsibilities between United States Attorneys and litigating divisions in matters which come under the purview of the ASG and recommends course of action. It is important for the incumbent of this position to be experienced in litigation which comes under the purview of the ASG and court procedures in that the incumbent will be advising on the legal merits of the case as well as the overall strategy to employ.

7. In the absence of the ASG, serves in that position.

CONTROLS OVER WORK

Work is performed under the general supervision of the ASG. Assignments are received in terms of broad objectives to be achieved.

Campaign Contributions

Gorsuch, Neil M Mr.
9/17/2004 $250.00
Washington, DC 20036
Kellogg Huber Hansen/Lawyer -[Contribution]
REPUBLICAN NATIONAL COMMITTEE

GORSUCH, NEIL M MR.
8/19/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

GORSUCH, NEIL M MR.
6/26/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

Gorsuch, Neil M. Mr.
5/31/2000 $250.00
Washington, DC 20005
Kellogg Huber/Attorney -[Contribution]
BUSH FOR PRESIDENT INC

Gorsuch, Neil M. Mr.
2/25/2000 $250.00
Washington, DC 20005
-[Contribution]
MCCAIN 2000 INC

GORSUCH, NEIL
8/13/1999 $300.00
WASHINGTON, DC 20005
ATTORNEY -[Contribution]
FRIST 2000 INC

Lentell v. Merrill Lynch & Co., Inc.,
396 F.3d 161, 2nd Cir.(N.Y.), Jan 20, 2005
... the brief) for Amicus State of New York. David C. Frederick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC (Neil M. Gorsuch, Paul B. Matey, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC; Robin S. Conrad, Stephanie A. Martz, ...

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2. **Z-Tel Communications, Inc. v. SBC Communications, Inc.,**
331 F.Supp.2d 513, 2004-2 Trade Cases P 74,534, RICO Bus.Disp.Guide 10,741, E.D.Tex., Aug 06, 2004

... Pickett & Lee, Texarkana, TX, Aaron M. Panner, Colin S. Stretch, Eugene M. Paige, Mark C. Hansen, Michael K. Kellogg, Neil M. Gorsuch, Kellogg Huber Hansen Todd & Evans, Washington, DC, Martin E. Grambow, William M. Schur, San Antonio, TX, for ...

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3. **Z-Tel Communications, Inc. v. SBC Communications, Inc.,**
331 F.Supp.2d 567, 2004-2 Trade Cases P 74,533, E.D.Tex., Aug 06, 2004

... assessing motion to transfer venue, law focuses on effects, rather than location, of alleged harm-triggering conduct. 28 U.S.C.A. § 1404(a). Neil M Gorsuch, Kellogg Huber Hansen Todd & Evans, Washington, DC, for Ameritech Corporation, Illinois Bell Telephone Company, Indiana Bell Telephone ...

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4. **Teachers' Retirement System of Louisiana v. Regal Entertainment Group,**
Not Reported in A.2d, 2004 WL 1385480, Del.Ch., Jun 14, 2004

... DE, for Plaintiff. Morris, Nichols, Arsht & Tunnell, Alan J. Stone (Del.I.D.# 2677), William M. Lafferty (Del.I.D.# 2755), Wilmington, DE, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, D.C., for Defendants. STIPULATION OF DISMISSAL Plaintiff Teachers' Retirement System ...

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5. **Twombly v. Bell Atlantic Corp.,**
313 F.Supp.2d 174, 2003-2 Trade Cases P 74,189, S.D.N.Y., Oct 08, 2003

... Corp., on the brief), for Defendant BellSouth Corp. Mark C. Hansen, Kellogg, Huber, Hansen, Todd & Evans,

P.L.L.C., Washington, DC (Neil M. Gorsuch and Michael Guzman, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.; Maria T. Galeno, Pillsbury Winthrop, LLP, on the ...

6. National Satellite Sports, Inc. v. Time Warner Entertainment Co., L.P.,
255 F.Supp.2d 307, 66 U.S.P.Q.2d 1777, 31 Media L. Rep. 1699, S.D.N.Y., Apr 04, 2003

... Hearn, Robert P. Parker, Paul, Weiss, Rifkind, Wharton & Garrison, New York, Randolph Frank Iannacone, Forster & Iannacone, Middle Village, Neil Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Defendants. MEMORANDUM ORDER RAKOFF, District Judge. Plaintiff National Satellite Sports, ...

7. In re QWest Communications International, Inc. Securities Litigation,
241 F.Supp.2d 1119, D.Colo., Nov 25, 2002

... James M. Lyons, Cindy M. Coles-Oliver, Jesus Manuel Vazquez, Jr., Rothgerber, Johnson & Lyons, LLP, Denver, CO, Mark Christian Hansen, Neil McGill Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, PLLC, Washington, DC, for Philip F. Anschutz, Craig D. Slater. ORDER DENYING ...

8. Verizon Delaware, Inc. v. Covad Communications Co.,
232 F.Supp.2d 1066, N.D.Cal., Nov 13, 2002

... could charge for "customer misdirect." Daniel H. Bookin, Randall Edwards, O'Melveny & Myers, LLP, San Francisco, CA, John H. Longwell, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, Steven F. Benz, for Verizon Delaware, Inc., Verizon New England, ...

... C. Rule 56(f) Request Verizon submits a document entitled "Federal Rule Of Civil Procedure 56(f) Declaration Of Neil M. Gorsuch." In this document, Mr. Gorsuch lists a number of areas about which Verizon would like to take discovery, ...

9. National Satellite Sports, Inc. v. Time Warner Entertainment Co. L.P.,
217 F.Supp.2d 466, S.D.N.Y., Sep 06, 2002

... 705(a), as amended, 47 U.S.C.A. § 605(a). Michael Dell, Kramer Levin Naftalis & Frankel, LLP, New York City,

for plaintiff. **Neil Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, Henk J. Brands, Eugene M. Paige, Paul, Weiss, Rifkind, Wharton & ...

10. Conwood Co., L.P. v. U.S. Tobacco Co.,
290 F.3d 768, 2002-1 Trade Cases P 73,675, 58 Fed. R. Evid. Serv. 1566, 2002 Fed.App. 0171P, 6th Cir.(Ky.), May 15, 2002

... Clifford Craig (briefed), Taft, Stettinius & Hollister, Cincinnati, OH, Richard C. Roberts (briefed), Whitlow, Roberts, Houston & Straub, Paducah, KY, **Neil** M. **Gorsuch** (briefed), Mark C. Hansen (argued and briefed), Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Plaintiffs-Appellees. Neal ...

11. Terra Foundation for the Arts v. Perkins,
151 F.Supp.2d 931, N.D.Ill., Jun 29, 2001

... IL, Lawrence E. Levinson, Leonard Garment, Verner, Liipfert, Bernhard, McPherson and Hand, Washington, DC, K. Chris Todd, John H Longwell, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans Washington, DC, for plaintiffs. AUSA, United States Attorney's Office, Chicago, IL, for ...

12. Zachair, Ltd. v. Driggs,
135 Md.App. 403, 762 A.2d 991, Md.App., Nov 30, 2000

... with the purchaser's right to run the mine; evidence indicated that more than twice the minimum was mined at times. **Neil** M. **Gorsuch** (Mark C. Hansen, Sarah O. Jorgensen and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., on the brief), ...

13. Conwood Co., L.P. v. U.S. Tobacco Co.,
Not Reported in F.Supp.2d, 2000 WL 33176054, 2000-2 Trade Cases P 73,077, W.D.Ky., Aug 10, 2000

... Paducah, Ky., Robert E. Craddock, Courtnay Stallings Leach, John S. Wilson, III, of McDonnel & Boyd, Memphis, Tenn., Mark Hansen, **Neil** M. **Gorsuch**, Steven F. Benz, Reid M. Figel, Courtney S. Elwood, Benjamin A. Powell, Michael Guzman of Kellogg, Huber, Hansen, ...

14. GTE New Media Services, Inc. v. Ameritech

Corp.,
21 F.Supp.2d 27, 1998-2 Trade Cases P 72,316, D.D.C., Sep 28, 1998

... J. Zastrow, Bell Atlantic Network Services, Inc., Arlington, VA, Richard G. Taranto, Farr & Taranto, Washington, DC, Mark C. Hansen, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Bell Atlantic Corporation, and Bell Atlantic Electronic Commerce ...

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15. Zachair, Ltd. v. Driggs,
141 F.3d 1162 (Not selected for publication in the Federal Reporter), 1998 WL 211943 (4th Cir.(Md.)), 1998-1 Trade Cases P 72,139, 4th Cir.(Md.), Apr 30, 1998

... United States District Court for the District of Maryland, at Greenbelt. Andre M. Davis, District Judge. (CA-96-2364-AMD) Mark C. Hansen, **Neil** M. **Gorsuch**, KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Washington, D.C., for Appellant. Lee H. Simowitz, Leonard C. Greenebaum, Shelby ...

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16. J.S. Service Center Corp. v. General Elec. Technical Services Co., Inc.,
937 F.Supp. 216, Fed. Sec. L. Rep. P 99,354, RICO Bus.Disp.Guide 9177, S.D.N.Y., Jul 17, 1996

... Baldwin, of counsel), New York City, for Plaintiffs. Kellogg, Huber, Hansen, Todd & Evans (Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, of counsel), Washington, DC, General Electric Company (E. Scott Gilbert, James DeVine, Eduardo L. Buso, of counsel), New ...

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17. Buford v. H & R Block, Inc.,
168 F.R.D. 340, RICO Bus.Disp.Guide 9123, S.D.Ga., Jul 11, 1996

... 13, 23, 28 U.S.C.A. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Tracy Buford. Paul Wain Painter, Jr., Painter, Ratterree, Connolly ...

... PA, for Bank One. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Robert H. Bacon, April N. Coley, Jamil Parker. ORDER ...

National Review

February 7, 2005, Monday

SECTION: National Review Online

LENGTH: 847 words

HEADLINE: Liberals'n'Lawsuits

BYLINE: By **Neil Gorsuch**

BODY:
Who do you think said this: "Reliance on constitutional lawsuits to achieve policy goals has become a wasting addiction among American progressives... Whatever you feel about the rights that have been gained through the courts, it is easy to see that dependence on judges has damaged the progressive movement and its causes"? Rush Limbaugh? Laura Ingraham? George Bush? The author is David von Drehle, a Washington Post columnist. This admission, by a self-identified liberal, is refreshing stuff. It is a healthy sign for the country and those rethinking the direction of the Democratic party in the wake of November's election results. Let's hope this sort of thinking spreads.

There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, von Drehle recognizes that American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education.

This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide.

At the same time, the politicization of the judiciary undermines the only real asset it has--its independence. Judges come to be seen as politicians and their confirmations become just another avenue of political warfare. Respect for the role of judges and the legitimacy of the judiciary branch as a whole diminishes. The judiciary's diminishing claim to neutrality and independence is exemplified by a recent, historic shift in the Senate's confirmation process. Where trial-court and appeals-court nominees were once routinely confirmed on voice vote, they are now routinely subjected to ideological litmus tests, filibusters, and vicious interest-group attacks. It is a warning sign that our judiciary is losing its legitimacy when trial and circuit-court

judges are viewed and treated as little more than politicians with robes.

As von Drehle recognizes, too much reliance on constitutional litigation is also bad for the Left itself. The Left's alliance with trial lawyers and its dependence on constitutional litigation to achieve its social goals risks political atrophy. Liberals may win a victory on gay marriage when preaching to the choir before like-minded judges in Massachusetts. But in failing to reach out and persuade the public generally, they invite exactly the sort of backlash we saw in November when gay marriage was rejected in all eleven states where it was on the ballot. Litigation addiction also invites permanent-minority status for the Democratic party--Democrats have already failed to win a majority of the popular vote in nine out of the last ten presidential elections and pandering to judges rather than voters won't help change that. Finally, in the greatest of ironies, as Republicans win presidential and Senate elections and thus gain increasing control over the judicial appointment and confirmation process, the level of sympathy liberals pushing constitutional litigation can expect in the courts may wither over time, leaving the Left truly out in the cold.

During the New Deal, liberals recognized that the ballot box and elected branches are generally the appropriate engines of social reform, and liberals used both to spectacular effect--instituting profound social changes that remain deeply ingrained in society today. In the face of great skepticism about the constitutionality of New Deal measures in some corners, a generation of Democratic-appointed judges, from Louis Brandeis to Byron White, argued for judicial restraint and deference to the right of Congress to experiment with economic and social policy. Those voices have been all but forgotten in recent years among liberal activists. It would be a very good thing for all involved--the country, an independent judiciary, and the Left itself--if liberals take a page from David von Drehle and their own judges of the New Deal era, kick their addiction to constitutional litigation, and return to their New Deal roots of trying to win elections rather than lawsuits.

--**Neil Gorsuch** is a lawyer in Washington, D.C.

Legal Times

January 31, 2005

SECTION: POINTS OF VIEW; Pg. 52

LENGTH: 2120 words

HEADLINE: No Loss, No Gain;
The Supreme Court should make clear that securities fraud claims can't dodge the element of causation

BYLINE: By **Neil** M. **Gorsuch** and Paul B. Matey

BODY:
The free ride to fast riches enjoyed by securities class action attorneys in recent years appeared to hit a speed bump on Jan. 12, when the Supreme Court heard arguments in Dura Pharmaceuticals v. Broudo.

The case gives the high court its first chance to explain the doctrine of loss causation in securities fraud litigation. The case is significant because it offers the Court an opportunity to curb frivolous fraud claims merely by enforcing the simple and straightforward causation requirement that Congress wrote into the Private Securities Litigation Reform Act more than a decade ago.

NEW NAME, OLD PROBLEM

The term loss causation is nothing more than a new name for a very old problem. Suppose an investor purchases $50 of stock in a corporation. The value of the investment later declines to $5. Some time after this decline, the corporation announces a restatement of an accounting error. The investor's shares remain at $5.

The investor sues, pointing to the sharp drop in the value of his stock and alleging that the company's earlier accounting misstatement constituted fraud on the market. But can the plaintiff's loss actually be attributed to the corporation's alleged accounting fraud? In most circuits, the answer is no, and a securities fraud claim on these facts would be dismissed for a reason that any first-year law student could explain with ease: an absence of proximate causation.

Whether couched in terms of the defendant's "duty" to the plaintiff or in terms of the "foreseeability" of the particular harm as a result of the defendant's conduct, the common law tort requirement of proximate causation sets limits on recovery as a matter of public policy.

In the Private Securities Litigation Reform Act of 1995, Congress expressly adopted the then-prevailing view in the federal circuit courts that loss causation is a separate and unique element of any securities fraud claim. The PSLRA requires plaintiffs to prove that the defendant's act or omission "caused the loss for which the plaintiff seeks to recover damages." Congress added this requirement specifically to increase the plaintiff's pleading burden in order to deter what legislators believed was an increasing trend in unmeritorious securities fraud claims.

LAWYER-DRIVEN MACHINATIONS?

While plaintiffs attorneys have a strong financial incentive to bring even meritless suits if there's a chance they will settle, and defendants have a strong incentive to settle them, neither has a particularly strong incentive to protect class members. Once the scope of the settlement fund is determined, defendants usually have no particular concern how that fund is allocated between shareholders and plaintiffs counsel. And with the threat of adversarial scrutiny from the defendant largely abated, plaintiffs counsel has free rein to seek [and little reason not to try to grab] as large a slice of the settlement fund as possible.

The 3rd Circuit has put the problem this way: Settlement hearings frequently devolve into "pep rallies" in which no party questions the fairness of the settlement and "judges no longer have the full benefit of the adversarial process."

The result is that securities fraud class actions can end up not only harming the company but also failing to help the supposedly wronged shareholders.

FROM BAD TO WORSE

Given the plain meaning of the PSLRA, the legislative history, the scholarship, and the decisions of the 2nd, 3rd, 7th, and 11th circuits, Dura Pharmaceuticals v. Broudo seems like it should be an easy case for the Supreme Court.

On Feb. 24, 1998, Dura announced a revenue shortfall. By the next day, shares in Dura had dropped from $39.125 to $20.75 for a one-day loss of 47 percent. More than eight months later, on Nov. 3, 1998, Dura announced for the first time that the Food and Drug Administration had declined to approve its Albuterol Spiros asthma device. Nonetheless, Dura shares fell only slightly after this announcement. Share prices initially dropped from $12.375 to $9.75, but, within 12 trading days, they had recovered to $12.438, ultimately climbing back to $14 within 90 days. A claim of fraud on the market was brought on behalf of Dura investors, who allege that Dura knew about the possibility that the FDA might not approve Albuterol Spiros in advance and failed to disclose it in Securities and Exchange Commission filings.

Seeking to boost their recovery, the class action plaintiffs never alleged damages based on the brief $2.625 stock price dip after the Nov. 3 disclosure of the supposed fraud. Rather, they demanded recovery based on the much more significant Feb. 24 decline of almost $19. In other words, the plaintiffs sought damages based on a decline in share value that occurred nine months before the disclosure of the alleged fraud.

The facts were as simple, and seemingly insufficient, as if the unfortunate Mrs. Palsgraf had filed suit for a headache she developed before ever leaving for the train station. The District Court agreed and dismissed the action. But the 9th Circuit saw things differently, finding the loss causation requirement satisfied where the plaintiffs "have shown that the price on the date of purchase was inflated because of the misrepresentation."

The economic implications of the 9th Circuit's decision are staggering. Rather than holding companies liable for the damage they inflict on their shareholders as reflected by an actual market decline, the 9th Circuit's rule permits liability to be found and damages to be awarded even when the plaintiff can point to no material

The 3rd, 7th, and 11th circuits have already read this simple and efficient pleading requirement to mean that the defendant's conduct must be a proximate cause of the plaintiff's loss. And that interpretation received a ringing endorsement from the U.S. Court of Appeals for the 2nd Circuit on Jan. 20 as the court affirmed the decision of the late Judge Milton Pollack in Lentell v. Merrill Lynch.

In the Merrill Lynch case, a class of investors in once high-flying Internet startups brought suit for losses suffered after the "irrational exuberance" of the late 1990s diminished and the Internet bubble burst. Eager to find someone to blame for their losses, the plaintiffs filed suit against Merrill Lynch claiming the company deliberately issued falsely positive recommendations in its analyst reports [this despite the fact that the plaintiffs had not even seen a copy of Merrill's reports]. The 2nd Circuit rejected the plaintiffs' construction of the loss causation requirement and held that they failed "to account for the price-volatility risk inherent in the stocks they chose to buy" or to plead any other facts showing that "it was defendant's fraud -- rather than other salient factors -- that proximately caused [their] loss."

FRIVOLOUS CLAIMS

The problem is that securities fraud litigation imposes an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing businesses billions of dollars in settlements every year. Recent studies conclude that, over a five-year period, the average public corporation faces a 9 percent probability of facing at least one securities class action.

Yet despite congressional efforts at reform [first in the PSLRA and then in the Securities Litigation Uniform Standards Act of 1998], the number of securities class actions has not declined. Quite the opposite, in fact, has occurred: In the first six years after the enactment of the PSLRA, the mean number of securities fraud suits rose by an astonishing 32 percent according to one law review article. Another study concluded that, since the enactment of the PSLRA, public companies face a nearly 60 percent greater chance of being sued by shareholders. And the dismissal rate of securities fraud suits between 1996 and 2003 averaged only 8.4 percent.

As Rep. Anna Eshoo [D-Calif.] put it back in 1995, "Businesses in my region place themselves in one of two categories: those who have been sued for securities fraud and those that will be."

One explanation for this trend is that securities fraud class actions are fundamentally different from other types of commercial litigation: Because the amount of damages demanded can be so great, corporations confront the reality that one bad jury verdict could mean bankruptcy. That sobering prospect encourages many responsible corporate fiduciaries to forgo the adversarial process, settling even meritless suits to avoid the risk of financial oblivion. Since the PSLRA's passage, more than 2,000 securities fraud cases have been filed in federal court, yet defendants have taken less than 1 percent to trial. So great is the pressure to settle that in 2004 one defendant agreed to settle a pending class action for $300 million even after the suit was dismissed by the trial court.

The resulting drain on the American economy is substantial. In the last four years alone, securities class action settlements have exceeded $2 billion per year.

market reaction to a disclosure of alleged fraud.

The 9th Circuit decision would deny courts an important means for weeding out at the pleading stage lawsuits where the alleged fraud had no empirical effect on share price, and thus imposed no demonstrable harm on class members. The decision thus adds fuel to a fire in which virtually every case is settled, and only the lawyers truly win.

A SKEPTICAL SUPREME COURT

Accepting the request of the solicitor general, the Supreme Court granted certiorari to determine whether the 9th Circuit's holding meets the standards established by the PSLRA.

The questions posed by the justices at oral argument earlier this month suggest a fundamental disagreement with the 9th Circuit's logic. Justice Ruth Bader Ginsburg asked: "How could you possibly hook up your loss to the news that comes out later? There is no loss until somehow the bad news comes out." Justice David Souter commented that the plaintiffs' argument "strikes me as an exercise in an inconsistent theory." And Justice Sandra Day O'Connor summed up the problem: "The reason why loss causation is used is because a 'loss' experienced by the plaintiff is 'caused' by the misrepresentation."

These observations demonstrate a sensitivity to the practical impact of the 9th Circuit's decision. By allowing recovery where disclosures do not prompt any stock price decline, the lower court's rule encourages, and in fact depends upon, a return to the use of "junk science": Parties and courts, lacking any empirically verifiable proof of injury, will reach for a grab bag of speculative theories to estimate damages.

Like Daubert v. Merrell Dow Pharmaceuticals Inc. [1993] and its progeny, the loss causation requirement arms courts with a tool to ensure that the legal system compensates fully for empirically confirmable losses, but not for phantom losses where cause-and-effect relationships have not been reliably proved and perhaps cannot be.

Moreover, the 9th Circuit's rule serves to chill investment advice and the free flow of information and the exchange of opinions critical to our capital markets. Without a requirement tying the disclosure of the alleged fraud to a timely market effect, dissatisfied investors will be encouraged to comb through the musings of television investment shows, Internet investment sites and, of course, investment banks, regardless of whether anyone actually listened to them, to find any investment advice proved mistaken by later events and then to sue for damages, claiming that the advice artificially inflated the value of the stock in question.

Such dangers confirm that the 9th Circuit's departure from the essential element of loss causation in claims for fraud is not only doctrinally inconsistent with basic common law tort pleading elements but also bad public policy.

To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes

easy answers are the best solution to easy cases.

Neil M. **Gorsuch** is a partner in D.C.'s Kellogg, Huber, Hansen, Todd, Evans & Figel. He is a former law clerk to Justices Byron White and Anthony Kennedy. Paul B. Matey is an associate at the firm. They filed an amicus brief in Dura Pharmaceuticals on behalf of the U.S. Chamber of Commerce.

THE WALL STREET JOURNAL.

Rule of Law: The Constitutional Case for Term Limits

Gorsuch, Neil, *Guzman, Michael*. **Wall Street Journal**. (Eastern edition). New York, N.Y.: Nov 4, 1992. pg. A15

Voters in 14 states yesterday had a unique opportunity to send a message of change. In addition to electing a president and members of Congress, they also decided whether to limit the terms their congressional representatives may serve.

While the results are not known at this writing, it's clear any successful term limit will face a legal challenge from incumbents loath to yield their seats. Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: "No, none, no legal case can be made for them."

We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved.

Most of the term limit proposals on the ballot yesterday do nothing more than restrict a long-term incumbent's access to the ballot. Rather than flatly forbidding an incumbent who has served more than the allowed number of terms from running again, most simply deny him a spot on the printed ballot for a period of four years. During this period, an incumbent may wage a write-in candidacy and, of course, retain his seat if he wins. (Three current members of Congress -- Rep. Ron Packard, Rep. Joe Skeen and Sen. Strom Thurmond -- won their seats as write-ins.)

While forcing an incumbent to run a write-in campaign significantly hurts his chances for re-election, it does not prevent him from running. Many ballot-access regulations have equally severe consequences for aspiring candidates, and the courts have upheld them.

The Constitution gives states clear authority to impose ballot-access rules. Article I, Section 4 specifically empowers states to regulate the "manner" of congressional elections. States have consistently used this authority to enact comprehensive procedures for gaining access to the ballot. These state-enacted "manner regulations" have survived a variety of legal challenges.

In Storer v. Brown (1974), for example, the Supreme Court considered a California regulation denying ballot access to any independent candidate who had been a registered member of a political party within the past year. Although the rule effectively required two congressional candidates to wait a full term before they could obtain a spot on the ballot -- much as a term limit would compel a long-term incumbent to wait two terms -- the court easily approved it.

Likewise, a district court approved the Pennsylvania ballot-access law that forced Rep. Lawrence Williams to sit out a term. When Mr. Williams lost the Republican primary in May 1974, he tried to secure a place on the November ballot as an independent, but a state rule precluded any primary loser from the general election ballot. Mr. Williams fought the regulation in court without success.

The Supreme Court has consistently upheld manner regulations at least as severe as term limits. In Davis v. Bandemer (1986), the court approved virtually all state political gerrymandering schemesno matter how hard on individual candidates. It did so despite the fact that state legislatures often draw wildly contorted district lines specifically to deny certain individuals any realistic hope of winning, and despite the fact that these lines often remain in place for 10 years or more until the next census and redistricting.

A rarely discussed constitutional detail also gives courts little incentive to invalidate term limits. Although Article I authorizes states to regulate congressional elections, it also authorizes Congress to override any manner regulation by a simple majority vote. Why then, a court might wonder, should it protect incumbents from their constituents when incumbents have in hand the power to protect themselves?

Opponents of term limits argue that term limits are not ballot-access regulations but qualifications for office.

This is an attempt to place term limits in a different legal category. The Constitution lists three qualifications for members of Congress: He must be of a requisite age, a U.S. citizen for an established period and an inhabitant of the state he represents. Opponents say term limits effectively add a fourth qualification: namely, that no candidate may be a long-term incumbent.

If viewed as a qualification, a term limit would almost certainly be unconstitutional. The Supreme Court in Powell v. McCormack (1969) concluded that Congress may not add to the established qualifications. In that case, the House had refused to seat Adam Clayton Powell Jr. citing his alleged ethical improprieties. The court, however, ordered the House to seat Powell, arguing that if Congress could set its own qualifications for membership it might use those powers to exclude duly elected representatives for any number of politically motivated reasons.

But the attempt to label term limits as "qualifications" overlooks the fact that the regulation at issue in Powell flatly banned an elected representative from office. Term limits leave incumbents free to wage write-in campaigns and to regain a ballot spot after a few years.

More important, the Supreme Court has already rejected the argument that state ballot-access regulations are really qualifications. In Storer, Justice Byron White dismissed that argument as "wholly without merit." Even Justice William Brennan's dissent in that case, which emphasized the "impossible burden" California had placed on independent candidates, never suggested that the ballot-access procedures at issue constituted qualifications.

Indeed, as both Storer and Williams show, judges have been reluctant to view ballot-access regulations as qualifications. They sense correctly that they would be stepping into a legal morass. There are a huge number of ballot-access rules, and a clever lawyer can argue that any of them creates some sort of qualification. Even the simple requirement that an independent candidate gather a certain number of signatures before being included on the ballot -- a requisite in nearly every state -- could be described as imposing a fourth qualification that he demonstrate quantifiable popular support.

Finally, the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers -- a desire to secure broad political participation and promote a representative legislature.

Mr. Gorsuch is a Marshall Scholar at Oxford. Mr. Guzman is a legal assistant at the Iran-U.S. Claims Tribunal in The Hague.

Presidential Personnel, White House Office of

Bullock, Katja – Appointee Files – Senior Executive Service/Schedule C

Gorsuch, Neil

Name: Gorsuch, [redacted] Neil

Agency or Dept/Position: DOJ- Principal Deputy Associate Attorney General

EOD Date: 4/12/05

New Duties: _____

NOTES: _____

GS: _____ to GS: _____ 7.6% ↑

SES: 149,200 to SES: 160,608

Approve _____ Deny _____ _____ _____

Office of Presidential Personnel Date

Request for SES Noncareer or Limited Appointment Authority

Part A - Agency Information

1. Agency name	2. Date of request *(mm,dd,yyyy)*	3. Date received at OPM *(OPM use only)*
Department of Justice	12/09/2005	

4. Agency point of contact	Telephone number	FAX number	E-mail
Jeanne N. Raymos	(202) 616-3721	(202) 514-0673	Jeanne.Raymos@usdoj.gov

5.

U.S. Office of Personnel Management
Office of Executive Resources Management
1900 E Street NW, Room 6484
Washington, DC 20415-0001

Attention Bill Collins
FAX number is (202) 606-2126

6. Request(s) for:

- ☐ New noncareer appointment
- ☐ Reassign a noncareer appointee
- ☐ Limited term appointment
  Requested duration: ☐ Months_____ ☐ Days_____
- ☐ Limited emergency appointment (not to exceed 18 months)
- ☐ Extension of limited appointment
  Requested duration: ☐ Months_____ ☐ Days_____
- ☐ Change in title (show current title below; show new title in 10a.)
  Pay adjustment from $149,200 plus $11,408 to $160,608
- ☑ Other (specify on supplemental sheet, e.g. SES allocation)

7. Name of candidate	8. EIS case number	9. Position number
Neil M. Gorsuch (date last pay adjustment: 6/12/05)		DJES-1151

10a. Position title	10b. Organization	10c. Office	11. Recruited from
Principal Deputy Associate Attorney General	Department of Justice	OASG	

Endorsement Statement

I endorse the above request made to the Office of Personnel Management. I certify that the position is a General position and certify that the candidate meets the professional/technical, executive and managerial qualifications for this position.

12. Department/Agency head name	13. Department/Agency head signature *(or designee)*	14. Date signed
Alberto R. Gonzales	A. R. Gonzales	12-15-05

Part B - Agency White House Liaison

1. Agency White House Liaison name	2. Agency White House Liaison signature	3. Date	4. Telephone
Jan Williams		12/04/05	(202) 514-2927

Part C - OPM Use Only

1. ☐ Your request for a new noncareer appointment authority, reassignment or change is:
   ☐ Your request for a limited term or limited emergency appointment authority for the duration of_____ is:
   ☐ Your request for __ temporary space allocation is:

- ☐ Approved
- ☐ Approved with modification →
- ☐ Disapproved
- ☐ Returned without action

Modification

2a. Number of noncareer allocations, if approved →	2b. Percent of SES space allocation → %

3. OPM White House Liaison signature	4. Date

5. Signature of OPM approving official	6. Title of OPM approving official	7. Date signed
	Chief of Staff, OPM	

THE WHITE HOUSE
WASHINGTON

PPO Non-Career Pay Adjustment Form
IN HOUSE USE ONLY

TO: _____, ASSOC DIR, PPO DATE SENT: _____

FROM: _____ PHONE: _____ DATE IN: _____

CANDIDATE: Gorsuch, Neil M. (Last, First, Middle)

POSITION TITLE: Principal Deputy Associate Attorney General GRADE: _____

DEPT/AGENCY: U.S. DoJ SUPERVISOR: Robert McCallum

NEW: _____ AMENDMENT: _____ RE-ESTABLISHMENT: _____

UPGRADE: _____ AGENCY TRANSFER: _____

CURRENT ADDRESS: 950 Pennsylvania Ave, N.W. RM 5706 PHONE: 202 305 1434

CITY: Washington STATE: DC ZIP: 20530

APPLICANT'S SIGNATURE: [signature] DATE: 12·14·05

A completed, political and personal resume with salary history, position description and OPM 1019/1652 form must be included for White House clearance to begin.

NEIL M. GORSUCH

(b)(6)
office: (202) 305-1434
home: (b)(6)
(b)(6)

EXPERIENCE

UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.
Principal Deputy to the Associate Attorney General, June 2005-present.
Assist the Department's number three officer in managing the Justice Department's civil justice components, including the Antitrust, Tax, Civil, Civil Rights, and Environment and Natural Resources divisions. Responsible for advising the Attorney General and Associate Attorney General on civil justice, federal and local law enforcement, and public safety matters, including the oversight and management of the Department's terrorism-related litigation.

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, Washington, D.C.
Partner, 1998-May 2005; Associate, 1995-1997.

Representative matters include: Conwood v. UST (trial and appeal leading to the largest affirmed private judgment in the history of federal antitrust laws, as of 2002); In re Qwest Communications International, Inc. Securities Litigation (represented former chairman and other directors in securities fraud suits and federal investigations); Teachers Retirement System of Louisiana v. Regal Entertainment (defeated derivative suit challenging a $710 million restructuring); Twombly v. SBC Communications (defeated a putative nationwide antitrust class action); Z-Tel Communications v. SBC Communications (defended SBC in an antitrust and RICO suit brought by a rival); AutoMall v. American Express (lead trial counsel for defendant American Express in a $78 million dispute); NCRIC, Inc. v. Columbia Hospital for Women (lead trial counsel for defendant hospital in which claims against it were rejected and the hospital won an $18.2 million counterclaim judgment); Zachair, Ltd. v. Driggs Corp. (lead trial and appellate counsel for plaintiff in $4 million abuse of process and tortious interference suit); Ashley v. Coopers & Lybrand (represented founder of Laura Ashley in a fraud suit against his former management consulting firm; settled during trial on undisclosed terms); Goff v. Bickerstaff & Ford Motor Company (RICO claims against client dismissed at trial); Dura Pharmaceuticals v. Broudo (represented U.S. Chamber of Commerce in securities fraud dispute before the U.S. Supreme Court); Quill v. Vacco and Washington v. Glucksberg (represented amicus American Hospital Association in U.S. Supreme Court right-to-die cases); Felzen v. ADM and Devlin v. Scardellitti (represented Council for Institutional Investors in U.S. Supreme Court cases concerning the rights of objecting shareholders in class action and derivative suit settlements); Lentell v. Merrill Lynch (securities fraud dispute before the Second Circuit).

SUPREME COURT OF THE UNITED STATES, Washington D.C.
Law clerk to Justice Byron R. White (Retired), and Justice Anthony M. Kennedy, 1993-94.

UNITED STATES COURT OF APPEALS, D.C. CIRCUIT, Washington, D.C.
Law clerk to U.S. Circuit Judge David B. Sentelle, 1991-92.

EDUCATION

OXFORD UNIVERSITY, Oxford, England.
D.Phil. in legal philosophy.
British Marshall Scholar.
Dissertation to be published in forthcoming book by Princeton Univ. Press.

HARVARD LAW SCHOOL, Cambridge, MA.
J.D. 1991 *cum laude.*
Harry S. Truman scholar (100 scholars chosen annually by U.S. Government)
Harvard Journal of Law & Public Policy, Senior Editor.
Head Teaching Fellow, political philosophy course at Harvard College.
Represented indigent criminal defendants in Boston courts.

COLUMBIA UNIVERSITY, New York, N.Y.
B.A. 1988, Political Science, with honors (G.P.A. 3.95).
Phi Beta Kappa, early selection (top 1% of class).
Elected Class Marshal by faculty.
Nachems senior honor society.
Graduated in three years.
Founded and edited student newspaper.

PUBLICATIONS The Future of Assisted Suicide and Euthanasia in America (book forthcoming from Princeton University Press, 2006); Ensuring Class Action Fairness, Federal Trade Commission Class Action Workshop (Sept. 2004); Justice White and Judicial Excellence, distributed nationally by UPI (May 2002); The Legalization of Assisted Suicide and the Law of Unintended Consequences, 2004 Wisconsin Law Review 1347; The Right to Assisted Suicide and Euthanasia, 23 Harvard Journal of Law and Public Policy 599 (2000); Liberals and Lawsuits, National Review Online (Feb. 2005). Co-author: No Loss, No Gain, The Legal Times (2005) (concerning securities fraud lawsuits); Settlements in Securities Fraud Class Actions: Improving Investor Protections, Washington Legal Foundation (April 2005) and reprinted in Andrews Class Action Litigation Reporter (August 2005); Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits, 20 Hofstra Law Review 341 (1991) and reprinted in Policy Analysis on Term Limits, Cato Institute Policy Analysis No. 178 (1992); The Constitutional Case for Term Limits, Wall Street Journal (Nov. 1992).

SPEECHES Speeches include before: Washington, D.C. Bar Association, Wisconsin Bar Association, Federal Trade Commission workshop, National White Collar Crime Center, American Association for the Advancement of Science, Common Good, Prime Time Radio, British Marshall Scholarship Commission, various gatherings of U.S. Department of Justice employees.

ASSOCIATIONS Term Member, Council on Foreign Relations; Harry S. Truman Scholarship 2006 Selection Committee; Columbia University Alumni Representative Committee; American Bar Association, Litigation and Antitrust sections. National high school debate champion. Listed in Who's Who in America, Who's Who in American Law.

PERSONAL Married; two daughters.

PPO AD: jm DATE RECEIVED BY OPA: _____ DATE DUE TO PPO: _____ POTUS Mtg. Date (if applicable): _____

NAME: Gorsuch, Neil

HOME/VOTING ADDRESS: McLean, VA

POTENTIAL AGENCY/POSITION: DOJ / DAAG - Associate's Office

____PAS ____PA X SES ____SKC ____B/C

X PERMANENT ____ TEMPORARY

REC 1: OPA POSITION OF REC 1: _____

REC 2: _____ POSITION OF REC 2: _____

POLITICAL CHECK:

Notes

NA VOTE CHECK

R FEC W

____ CONFIRM RECOMMENDER

____ B/C STATE LEADERSHIP

Talked to: _____ Position: _____ Approve (Y/N): ____
Notes:

Talked to: _____ Position: _____ Approve (Y/N): ____
Notes:

√ APPROVE ____ DENY Sam Taylor (CRF) OFFICE OF POLITICAL AFFAIRS W RANK 4/12/05 DATE

1 – Known to OPA
2 – Unknown to OPA – full political check completed
3 – Unknown to OPA – abbreviated political check
4 – unknown to OPA – no political check completed because _____

Name, Last	First	Middle	Title	Occupation
GORSUCH	NEIL	M.		Attorney

Position Sought	Position	Firm / Agency
DAAG-OLC, DOJ	**Partner** 1998 – Present	Kellogg, Huber, Hansen, Todd & Evans

Notables

- **Gorsuch's Mother, The Late Anne M. Gorsuch Burford, Was Former Environmental Protection Agency Director During The Reagan Administration.**
- **In A *National Review* Online Article, Gorsuch Criticized Excessive Litigation, Claiming "American Liberals Have Become Addicted To The Courtroom."** "There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, ... American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education. This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide." (*National Review* Online, 2/7/05) (Article Attached)
- **In A Lengthy *Legal Times* Article, Gorsuch Argued The Supreme Court Should Clarify Securities Fraud Laws.** "To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes easy answers are the best

solution to easy cases." (*Legal Times*, 1/31/05) (Article Attached)

- **Gorsuch Commented On Securities Fraud Case, Regarding Question Of Whether One Can Sue For Fraud Despite Not Suffering Financial Loss.** "If you buy a company's stock at $10 a share, then learn the company inflated the stock's value, should you be able to sue for securities fraud – even if you sold the stock with no financial loss? This is the question going before the U.S. Supreme Court Wednesday (Jan. 12) in a case involving former San Diego drug company Dura Pharmaceuticals Inc. and investors who say they were victimized by Dura's misrepresentations about its stock. The high court's ruling could affect anyone who buys or sells stocks, or anyone who invests in mutual funds that buy and sell stocks on their behalf. 'This is a case of extreme importance in securities law,' said Neil Gorsuch, an attorney representing the U.S. Chamber of Commerce, which is siding with Dura in the case known as Dura Pharmaceuticals Inc. vs. Michael Broudo. 'The whole question is whether damages should be tied to (money) actually lost, or whether you're going to permit damages ... not tied to shareholders' actual losses.'" (*Copley News Service*, 1/5/05)

- **Gorsuch Signed Letter Criticizing Clerks Who Disclosed Confidential Information About Supreme Court Deliberations Regarding The 2000 Election.** "According to an article recently published in *Vanity Fair* magazine [David Margolick, Evgenia Peretz, and Michael Shnayerson, 'The Path to Florida,' *Vanity Fair*, Oct. 2004, at 310], a number of former U.S. Supreme Court law clerks, who served during the Court's October 2000 term in which Bush v. Palm Beach County and Bush v. Gore were decided, intentionally disclosed to a reporter confidential information about the Court's internal deliberations in those cases. If true, these breaches of each clerk's duty of confidentiality to his or her appointing justice -- and to the Court as an institution – cannot be excused as acts of 'courage' or something the clerks were 'honor-bound' to do. ... To the contrary, this is conduct unbecoming any attorney or legal adviser working in a position of trust. Furthermore, it is behavior that violates the Code of Conduct to which all Supreme Court clerks, as the article itself acknowledges, agree to be bound. Although the signatories below have differing views on the merits of the Supreme Court's decisions in the election cases of 2000, they are unanimous in their belief that it is inappropriate for a Supreme Court clerk to disclose confidential information, received in the course of the law clerk's duties, pertaining to the work of the Court. Personal disagreement with the substance of a decision of the Court [including the decision to grant a writ of certiorari] does not give any law clerk license to breach his or her duty of confidentiality or 'justif[y] breaking an obligation [he or she would] otherwise honor.'" (*Legal Times*, 9/27/04)

- **Gorsuch Praised Ruling Awarding Columbia Hospital For Women Medical Center $18.2 Million In Damages.** "A D.C. Superior Court jury awarded the defunct Columbia Hospital for Women Medical Center $18.2 million in damages, agreeing with the hospital that a malpractice insurance company had overcharged for premiums and encouraged doctors to practice elsewhere. ... The jury rejected claims by NCRIC in a 2000 lawsuit that Columbia had failed to pay $3 million in premiums and interest. ... The 136-year-old hospital closed in May 2002, citing severe financial problems. Columbia attorney Neil M. Gorsuch said of the verdict, returned on Friday: 'We feel that justice was done and are gratified that the jury, after a 21/2-week trial and significant deliberations, rendered a verdict confirming that NCRIC tortiously interfered with the operations of Columbia Hospital for Women.'" (*Legal Times*, 4/26/04)
- **In A Letter To The Editor, Gorsuch Criticized John Barrett For Accusing Court Overseeing Independent Counsel Of A "Partisan" Agenda.** "The March 9 front-page article on the three- judge panel overseeing the independent counsel law noted that the court recently denied the attorney fee applications of some targets in the Whitewater investigation on the ground that the Justice Department would have examined their actions even without the independent counsel statute. In the article, John Barrett, who worked in the independent counsel's office during the Iran-contra investigation, charges that the court's rationale is a cover for a 'partisan' agenda because the Justice Department investigated violations of the Boland Amendment before independent counsel Lawrence Walsh was appointed, yet the court approved some fee awards for people caught up in the Iran-contra investigation. But the article nowhere discloses a fact that precludes such claims of partisanship: None of the independent counsels in the Iran-contra affair contested fee applications arising from that investigation on the ground that the Justice Department already had started an investigation of Boland Amendment violations. If Mr. Walsh's team (on which Mr. Barrett served) knew of such 'facts' and failed to share them with the court, the fault plainly lies there. Courts rule only on the evidence that the parties present. The article also said that the presiding judge of the panel, David Sentelle (for whom I clerked years ago), named his daughter Reagan after the president who appointed him to the court. But Judge Sentelle's daughter was born in 1970, and Ronald Reagan appointed Mr. Sentelle to the court in 1985, when his daughter was 15. This is at least the second time *The Post* has printed this apocryphal story. And by the way, the article was kind to enough to say that Mr. Sentelle is 59; he is, in fact, 61." (*The Washington Post*, 3/18/04)
- **Gorsuch Claimed Both Parties Impose Litmus Tests On Judicial Nominees, Which "Serves To Weaken The Public Confidence In The Courts."** "Today,

5:98-CV-108-R (W.D. Ky.) PLAINTIFF'S ATTORNEYS: Richard C. Roberts of Paducah, Ky.'s Whitlow, Roberts, Houston & Straub; Mark C. Hansen, Neil M. Gorsuch, Michael J. Guzman and Benjamin A. Powell of Washington, D.C.'s Kellogg, Huber, Hansen, Todd & Evans DEFENSE ATTORNEYS: Neal R. Stoll, James A. Keyte, Chris T. Athanasia, Matthew Barnett and Rachel Mariner of New York's Skadden, Arps, Slate, Meagher & Flom; and John S. Reed II and Ridley M. Sandidge of Louisville, Ky.'s Reed Weitkamp Schell & Vice ... On March 28, a Paducah, Ky., jury awarded Conwood $350 million. This was trebled automatically, under federal antitrust law, and entered at $1.05 billion the following day. U.S. Tobacco filed motions for remittitur, a new trial and judgment as a matter of law; these were denied on Aug. 10. The verdict has been appealed to the U.S. Court of Appeals for the 6th Circuit, said defense counsel Neal R. Stoll: 'We do not believe this is a valid claim.'" (*The National Law Journal*, 2/19/01)

- **Gorsuch Represented Plaintiffs Who Brought Class Actions Against Banks, Alleging They Had Been Defrauded.** "The U.S. Court of Appeals for the Eleventh Circuit, in a case that has ramifications concerning class actions brought against banks and other financial institutions, affirmed the denial of class certification to a potential nationwide RICO class of as many as 10 million claimants. The court's two-page order, issued on June 9, characterized the 52-page opinion written by District Judge William T. Moore, Jr., as 'exhaustive.' Judge Moore, in a case of first impression, denied class certification to the plaintiffs on, July 11, 1996 (see CRR, Aug. 27, 1996, p. 7). The plaintiffs claimed they had been defrauded when they obtained tax refund anticipation loans from various banks through H&R Block and other 'electronic filers' of individual tax returns. The Judge held that the need for individual proof of reliance to establish each class member's RICO claim rendered that claim unsuited for class treatment because common issues would not predominate over individual issues and the case would not be manageable as a class action. ... Buford, et al. v. H&R Block, Inc., et al., 11th Cir., No. 96-8969, 6/9/97 Counsel for Plaintiffs: Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, Ga., Mark C. Hansen, Jeffrey A. Lamken, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washing-ton, D.C. Counsel for Defendants: Burt M. Rublin, Alan S. Kaplinsky and Walter M. Einhorn, Jr. of Ballard Spahr Andrews & Ingersoll, Philadelphia, Pa." (*Civil RICO Report*, 7/23/97)
- **Gorsuch Said Term Limits Are Constitutional.** "Cato's position, laid out in a study by attorneys Neil Gorsuch and Michael Guzman, is that the limits are constitutionally permissible under the doctrine that states can regulate the manner in which elections are held. 'In recent years states have enacted procedures, and the Supreme Court has upheld them,' says Mr. Pilon. 'The state has a right to

there are too many who are concerned less with promoting the best public servants and more with enforcing litmus tests and locating unknown 'stealth candidates' who are perceived as likely to advance favored political causes once on the bench. Politicians and pressure groups on both sides declare that they will not support nominees unless they hew to their own partisan creeds. When a favored candidate is voted down for lack of sufficient political sympathy to those in control, grudges are held for years, and retaliation is guaranteed. Whatever else might be said about the process today, excellence plainly is no longer the dispositive virtue, as it was to President Kennedy. The facts are undeniable. Today, half of the seats on the Sixth Circuit remain unfilled because of partisan bickering over ideological 'control' of that circuit. The D.C. Circuit operates at just two-thirds strength. Almost 20 percent of the seats on the courts of appeals and nearly 100 judgeships nationwide are vacant. The administrative office of the U.S. Courts has declared 32 judicial vacancy 'emergencies' in courts where filings are in excess of 600 cases per district judge or 700 cases per appellate panel. Meanwhile, some of the most impressive judicial nominees are grossly mistreated. Take Merrick Garland and John Roberts, two appointees to the U.S. Court of Appeals in Washington, D.C. Both were Supreme Court clerks. Both served with distinction at the Department of Justice. Both are widely considered to be among the finest lawyers of their generation. Garland, a Clinton appointee, was actively promoted by Republican Sen. Orrin Hatch of Utah. Roberts, a Bush nominee, has the backing of Seth Waxman, President Bill Clinton's solicitor general. But neither Garland nor Roberts has chosen to live his life as a shirker; both have litigated controversial cases involving 'hot-button' issues. ... Responsibility for the current morass does not rest with any one party or group; ample blame can be doled out all around. But litmus tests, grudge matches and payback are not the ways forward. Excellence is. As Lloyd Cutler, White House counsel to President Clinton, explained in testimony to the Senate Judiciary Committee last year, 'to make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong as a matter of political science; it also serves to weaken the public confidence in the courts.'" (*United Press International*, 5/4/02)

- **In A 2000 Publication Titled "The Right To Assisted Suicide And Euthanasia," Gorsuch Said The "Legal History Of Assisted Suicide And Euthanasia ... Concludes That Little Historical Antecedent Supports Treating Them As 'Rights.'"** (Questia Online Library Website, http://www.questia.com/PM.qst?a=o&d=5001776263, Accessed 3/15/05)
- **Gorsuch Represented Firm Awarded $350 Million From U.S. Tobacco.** "CASE TYPE: antitrust CASE: Conwood Co. L.P. v. U.S. Tobacco Co., No.

regulate.'" (*The National Law Journal*, 11/16/92)

- **In A *Wall Street Journal* Op-Ed, Gorsuch Argued The Constitutionality Of Term Limits.** "Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: 'No, none, no legal case can be made for them.' ... We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved. ... the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers – a desire to secure broad political participation and promote a representative legislature." (*The Wall Street Journal*, 11/4/92) (Op-Ed Attached)

- **Gorsuch Represented Company That Claimed Contract Was Terminated Because They Refused To Agree To Bribery Scheme; Claim Was Rejected Due To Only Indirect Injury.** "The Southern District of New York held that a company whose contract was allegedly terminated because the company failed to agree to a RICO bribery scheme was only injured indirectly by the scheme and therefore had no standing. Plaintiffs J.S. Service Center Corporation and Sercenco, S.A. (collectively Sercenco) alleged that General Electric Technical Services Company, Inc. and General Electric Company (collectively GE) engaged in a scheme to bribe officials at an electric plant in Peru. ... J.S. Service Center Corp. v. General Electric Technical Services Company, Inc., S.D.N.Y. 95 Civ. 3979, 7/17/96 Opinion by District Judge William C. Conner Counsel for Plaintiffs: Alan G. Blumberg, Joy Feigenbaun, Martin Bienstock, Linda Baldwin, Szold & Brandwen, P.C., New York, N.Y. Counsel for Defendants: Mark C. Hanson, Jeffrey A. Lamken, Neil M, Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, D.C., E. Scott Gilbert, James DeVine, Eduardo L. Buso, New York, N.Y." (*Civil RICO Report*, 9/30/96)

- **Gorsuch Said The Supreme Court Interprets Qualifications Clauses Of The Constitution Narrowly.** "The Supreme Court has generally struck down ballot access restrictions only if they discriminate against the poor or minor parties. In 1974, in Storer v. Brown, the court upheld a California law barring independents from congressional races who had belonged to another party within 11 months of the election. The court dismissed arguments that this added another qualification for Congress as 'wholly without merit.' A decade later, in Clements v. Fashing, the court upheld a Texas 'serve-your-term' law barring incumbents from seeking

another office until their current terms had expired. The court found the two-year waiting period mandated by the law a 'de minimus burden.' The court has also found constitutional state laws that barred entire groups of people from holding office. The Hatch Act, passed by Congress in 1939, prohibits most federal employees from running for any elective office. In 1973, the court upheld an Oklahoma law that imposed the Hatch Act's curbs on state employees. A forthcoming study by Neil Gorsuch and Michael Guzman for the Cato Institute finds that the Supreme Court has chosen to construe the qualifications clauses of the Constitution very narrowly. 'Indeed, it has used these clauses to strike down a legislative act only twice,' they note. 'By contrast, the Court has put Article I, Section 4 to ample use,' and allowed states a largely free rein in writing their own election laws to reflect local preferences." (*The Wall Street Journal*, 8/5/92)

- **As An Attorney, Gorsuch Has Been Cited In Many Court Cases.** (See Attached Pages)

Flags

(b)(6)

U. S. Department of Justice

Office of the Attorney General

Washington, D.C. 20530

DATE: April 6, 2005

TO: Amanda Becker

Telephone No. (202) 456-7149 Fax No. (202) 456-6615

FROM: John Eddy
Deputy White House Liaison

Telephone No. (202) 616 - 7740 Fax No. (202) 616 - 5117

TRANSMISSION CONTAINS 4 SHEETS INCLUDING THIS COVER SHEET

****

SPECIAL NOTE(S) Attached is a PPO form for Niel Gorsuch.

HIGHEST PREVIOUS SALARY CALCULATION FORM

CANDIDATE: NEIL GORSUCH

HIGHEST PREVIOUS SALARY: (b)(6)

PROPOSED GS LEVEL: $149,200 - SES

PERCENT INCREASE: N/A

EXAMPLE:

Highest previous salary:	60,000
Proposed GS Level:	GS-14 (78,265)
Calculation:	78,265 -60,000 18,265

Divide the difference by the highest previous salary for percent increase:

18,265/60,000= .3044 = 30%

DOB: (b)(6)
SS#:

NEIL M. GORSUCH

(b)(6)
office: (202) 326-7978
home: (b)(6)
e-mail: ngorsuch@khhte.com

EXPERIENCE

(b)(6)

KELLOGG, HUBER, HANSEN, TODD & EVANS, Washington, D.C.
Partner, 1998-present; Associate, 1995-1997.
Representative matters include:
Teachers' Retirement System of Louisiana v. Regal Entertainment, lead counsel in the successful defense of a derivative suit challenge to a $750 million corporate recapitalization.
Conwood v. UST, trial counsel for plaintiff in an antitrust case leading to a $1.05 billion judgment.
NCRIC v. Columbia Hospital, lead trial counsel for defendant hospital in a case where the jury rejected plaintiff's claims and awarded defendant $18.2 million for its counterclaims.
Automall v. American Express, lead trial counsel for American Express in a $78 million trial.
Zachair v. Driggs, lead trial counsel for plaintiff in an abuse of process and fraud case that resulted in a $4 million verdict.
In re Qwest Communications International, Inc. Securities Litigation, defending former chairman and other directors in securities fraud class actions, derivative lawsuits, and governmental investigations.
Z-Tel Communications v. SBC Communications, defending SBC in a $1.5 billion antitrust and RICO suit brought by a rival.
Have written briefs in a variety of Supreme Court cases, including: *Quill v. Vacco* and *Washington v. Glucksberg* (assisted suicide); *Felzen v. ADM* and *Devlin v. Scardellitti* (concerning class action and derivative suit reform); *Dura Pharmaceutical v. Broudo* (concerning securities fraud litigation).
Representative clients include: U.S. Chamber of Commerce; Council of Institutional Investors; directors of Qwest Communications; Regal Entertainment Group; SBC Communications; Travelex; American Express; Conwood Company; Hyatt Hotels.

SUPREME COURT OF THE UNITED STATES, Washington D.C.
Law clerk to Justice Byron R. White (Retired) and Justice Anthony M. Kennedy, 1993-94.

U.S. COURT OF APPEALS, D.C. CIRCUIT, Washington, D.C.
Law clerk to U.S. Circuit Judge David B. Sentelle, 1991-92.

EDUCATION

OXFORD UNIVERSITY, Oxford, England.
D.Phil. in legal philosophy.
British Marshall Scholar.
Dissertation to be published by Princeton University Press.
John M. Finnis, supervisor.
Rowed crew for University College.

HARVARD LAW SCHOOL, Cambridge, MA.
J.D. 1991 *cum laude*.
Harry S. Truman Scholar (100 scholars chosen annually by U.S. government).
Harvard Journal of Law & Public Policy, Senior Editor.
Head Teaching Fellow, Harvard College political philosophy course.
Represented indigent criminal defendants in Boston courts.

COLUMBIA UNIVERSITY, New York, NY.
B.A. 1988, Political Science, with honors (G.P.A. 3.95).
Phi Beta Kappa, early selection (top 1% of class).
Founded and edited student newspaper, *The Federalist Paper*.
Columnist for daily student newspaper, *The Spectator*.
Elected Class Marshal by faculty.
Nachems senior honor society, selected by peers.
Graduated in three years.

GEORGETOWN PREPARATORY SCHOOL, North Bethesda, MD.
National high school debate champion.
President of the student body.
Hamilton Medal for service to the school.

ARTICLES, SPEECHES

No Loss, No Gain, Legal Times, Jan. 31, 2005 (arguing for reform of class action securities litigation); *Justice White and Judicial Excellence*, distributed nationally by UPI (May 2002) (concerning the filibuster of judicial nominees); *Liberals and Lawsuits: Too Much Reliance on Litigation Is Bad for the Courts and the Democrats*, National Review Online, Feb. 7, 2005 (concerning the judicial nomination process and litigation reform); *The Right to Assisted Suicide and Euthanasia*, 23 Harvard Journal of Law and Public Policy 599 (2000) (arguing against the legalization of assisted suicide); *The Legalization of Assisted Suicide and the Law of Unintended Consequences*, 2004 Wisconsin Law Review 1347 (2004). Co-author: *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits*, 20 Hofstra Law Review 341 (1991); Policy Analysis on Term Limits, Cato Institute Policy Analysis No. 178 (1992); *The Constitutional Case for Term Limits*, Wall Street Journal, Nov. 14, 1992. Work in progress: book for Princeton University Press. Recent speeches and panels include: U.S. Federal Trade Commission (concerning class action reform); Wisconsin State Bar Association (concerning oral advocacy).

ASSOCIATIONS

Term Member, Council on Foreign Relations. American Bar Association (Litigation and Antitrust sections). John Carroll Society. Oxford Society of Washington, D.C. Fahy American Inn of Court (1998-2000). Listed in Who's Who in America, Who's Who in American Law.

POLITICAL

Ohio Bush-Cheney volunteer, 2004 campaign (oversaw legal teams in Eastern and Central Ohio counties). Co-Director, Virginia Lawyers for Bush-Cheney. Bush-Cheney Marshal. RNC Bronco. Republican National Lawyers Association, Co-Chairman of the Judicial Nominations Task Force (2001-02). Cited for Distinguished Service to the United States Senate for work in support of President Bush's judicial nominees by the Senate Republican Conference. Worked on Republican campaigns since 1976, including Reagan-Bush, Bush-Quayle.

PERSONAL

Born Denver, Colorado, [(b)(6)]. Married; two daughters. Enjoy fly fishing, skiing, tennis, trap/skeet shooting.

U. S. Department of Justice

Office of the Attorney General

Washington, D.C. 20530

DATE: April 19, 2005

TO: Amanda Becker

Telephone No. (202) 456-7149 Fax No. (202) 456-6615

FROM: John Eddy
Deputy White House Liaison

Telephone No. (202) 616 - 7740 Fax No. (202) 616 - 5117

TRANSMISSION CONTAINS 5 SHEETS INCLUDING THIS COVER SHEET

****

SPECIAL NOTE(S) Attached is the final paperwork for Neil M. Gorsuch.

Request for Senior Executive Service Appointing Authority

Agency Name: DEPARTMENT OF JUSTICE **Print Date:** APR-14-2005

POC: SHERRY A. MAHONEY **Phone:** (202) 514-6794 **Fax:** (202) 514-0673

Request No.: DJ05I0098 **Type:** APPOINTMENT **Temporary Allocation:** No

Extension: No **Duration:** **ES Pay Level:** $149,200

Candidate NEIL M GORSUCH

Position No.: DJES01151 **Title:** PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL

Organization Name: OFFICE OF THE ASSOCIATE ATTORNEY GENERAL

Recruited From:

GEO Location: WASHINGTON

Current Title: **Proposed Title:**

SES Endorsement Statement

I endorse the above request made to the Office of Personnel Management. I certify that the position is a General position and certify that the candidate meets the professional/technical, executive and managerial qualifications for the position.

Name/Title: Jeanne N. Raymos, Assistant Director Leadership Effectiveness Group Phone: (202) 514-6794

Signature: _____ Date Signed: _____

Agency White House Liaison

Name: Jan E. Williams Phone: (202) 514-2927

Signature: _____ Date Signed: 4/18/05

OPM USE ONLY

Check the appropriate box(es)

- ☐ Your request for a new noncareer appointment authority, reassignment or pay level change is:
- ☐ Your request for a limited term emergency appointment authority for the duration of _____ is:
- ☐ Your request for temporary space allocation is:

☐ Approved ☐ Approved with Modification* ☐ Disapproved ☐ Returned without Action

* Modification

Number of non-career allocations: _____ Percent of SES space allocation: _____ %

OPM W/H Liaison: _____ Date Signed: _____

OPM Approving Official: _____ Date Signed: _____

Chief of Staff, OPM

FAX: 202-606-2126 **ATTENTION: Executive Resources Staff, Room 6484**

POSITION DESCRIPTION (Please Read Instructions on the Back)

1. Agency Position No.: DJES 01151

2. Reason for Submission: [ ] Redescription [X] New [ ] Reestablishment [ ] Other
Explanation (Show any position replaced):

3. Service: [X] Hdqtrs. [ ] Field

4. Employing Office Location: Washington, DC

5. Duty Station: Washington, DC

6. OPM Certification No.:

7. Fair Labor Standards Act: [X] Exempt [ ] Nonexempt

8. Financial Statements Required: [X] Executive Personnel Financial Disclosure [ ] Employment and Financial Interests

9. Subject to IA Action: [ ] Yes [X] No

10. Position Status: [ ] Competitive [ ] Excepted (Specify in Remarks) [X] SES (Gen.) [ ] SES (CR)

11. Position Is: [ ] Supervisory [X] Managerial [ ] Neither

12. Sensitivity: [ ] 1-Non Sensitive [X] 3-Critical Sensitive [ ] 2-Noncritical Sensitive [ ] 4-Special Sensitive

13. Competitive Level Code:

14. Agency Use:

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. U.S. Office of Personnel Management						
b. Department, Agency or Establishment	Principal Deputy Associate Attorney General	ES	905		DM	5/24/02
c. Second Level Review						
d. First Level Review						
e. Recommended by Supervisor or Initialing Office						

16. Organizational Title of Position (if different from official title):

17. Name of Employee (if vacant): Neil Gorsuch

18. Department, Agency, or Establishment: Department of Justice

a. First Subdivision: Office of the Associate Attorney General

b. Second Subdivision:

c. Third Subdivision:

d. Fourth Subdivision:

e. Fifth Subdivision:

19. Employee Review—This is an accurate description of the major duties and responsibilities of my position.
Signature of Employee (optional):

20. **Supervisory Certification.** *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

a. Typed Name and Title of Immediate Supervisor:
Jay B. Stephens
Associate Attorney General

Signature: J.B. Stephens Date: 5/22/02

b. Typed Name and Title of Higher-Level Supervisor or Manager (optional):

Signature: Date:

21. **Classification/Job Grading Certification.** *I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the U.S. Office of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.*

Typed Name and Title of Official Taking Action:
Valerie M. Willis, Assistant Director
Executive Resources Group

Signature: Date:

22. Position Classification Standards Used in Classifying/Grading Position:

Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the U.S. Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the U.S. Office of Personnel Management.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)										
b. Supervisor										
c. Classifier										

24. Remarks:

25. Description of Major Duties and Responsibilities (See Attached)

PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL
ES-905

INTRODUCTION

The incumbent of this position serves as the Principal Deputy to the Associate Attorney General (ASG). The Principal Deputy functions as the primary assistant and alter ego to the ASG in all areas of the ASG's responsibilities. As such, the Principal Deputy exercises full responsibility for carrying out all policy, programmatic, legal, and managerial matters assigned or required to assure the Department's effective and efficient operations. This position is established to advise and assist the ASG, key Presidential appointees, and other senior staff in fulfilling the Department's mission.

DUTIES AND RESPONSIBILITIES

1. Assists the ASG in the day-to-day execution of his/her duties and responsibilities. Participates in the formulation, development, and execution of policies and programs.

2. Consults with the ASG and other organizational heads to relay policies of the ASG and their possible implications on the work of the legal divisions.

3. Represents the ASG in high level discussions involving policy and program operations, including conferring with high level officials of other Federal agencies, departments, and the White House.

4. Provides advice and assistance to the ASG, the Deputy Attorney General, the Attorney General, and other Deputy Associate Attorney General's concerning cases which come under the purview of the ASG. When significant controversy develops concerning policy or litigative strategy, the incumbent is responsible for advising the ASG of a resolution of the matter.

5. Establishes liaison and represents the ASG in an effort to improve the services provided by the Department. In this capacity, meets with high level officials of other agencies in order to explain Departmental policies and to better understand agencies' problems concerning matters undertaken by the Department. Recommends changes to the ASG concerning services provided by the Department. These changes may be in the form of changes in litigative strategy or organizational changes.

6. Reviews allocation of responsibilities between United States Attorneys and litigating divisions in matters which come under the purview of the ASG and recommends course of action. It is important for the incumbent of this position to be experienced in litigation which comes under the purview of the ASG and court procedures in that the incumbent will be advising on the legal merits of the case as well as the overall strategy to employ.

7. In the absence of the ASG, serves in that position.

CONTROLS OVER WORK

Work is performed under the general supervision of the ASG. Assignments are received in terms of broad objectives to be achieved.

Campaign Contributions

Gorsuch, Neil M Mr.
9/17/2004 $250.00
Washington, DC 20036
Kellogg Huber Hansen/Lawyer -[Contribution]
REPUBLICAN NATIONAL COMMITTEE

GORSUCH, NEIL M MR.
8/19/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

GORSUCH, NEIL M MR.
6/26/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

Gorsuch, Neil M. Mr.
5/31/2000 $250.00
Washington, DC 20005
Kellogg Huber/Attorney -[Contribution]
BUSH FOR PRESIDENT INC

Gorsuch, Neil M. Mr.
2/25/2000 $250.00
Washington, DC 20005
-[Contribution]
MCCAIN 2000 INC

GORSUCH, NEIL
8/13/1999 $300.00
WASHINGTON, DC 20005
ATTORNEY -[Contribution]
FRIST 2000 INC

Lentell v. Merrill Lynch & Co., Inc.,
396 F.3d 161, 2nd Cir.(N.Y.), Jan 20, 2005
... the brief) for Amicus State of New York. David C. Frederick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC (**Neil** M. **Gorsuch**, Paul B. Matey, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC; Robin S. Conrad, Stephanie A. Martz, ...

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2. Z-Tel Communications, Inc. v. SBC Communications, Inc.,
331 F.Supp.2d 513, 2004-2 Trade Cases P 74,534, RICO Bus.Disp.Guide 10,741, E.D.Tex., Aug 06, 2004

... Pickett & Lee, Texarkana, TX, Aaron M. Panner, Colin S. Stretch, Eugene M. Paige, Mark C. Hansen, Michael K. Kellogg, **Neil** M. **Gorsuch**, Kellogg Huber Hansen Todd & Evans, Washington, DC, Martin E. Grambow, William M. Schur, San Antonio, TX, for ...

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3. Z-Tel Communications, Inc. v. SBC Communications, Inc.,
331 F.Supp.2d 567, 2004-2 Trade Cases P 74,533, E.D.Tex., Aug 06, 2004

... assessing motion to transfer venue, law focuses on effects, rather than location, of alleged harm-triggering conduct. 28 U.S.C.A. § 1404(a). **Neil** M **Gorsuch**, Kellogg Huber Hansen Todd & Evans, Washington, DC, for Ameritech Corporation, Illinois Bell Telephone Company, Indiana Bell Telephone ...

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4. Teachers' Retirement System of Louisiana v. Regal Entertainment Group,
Not Reported in A.2d, 2004 WL 1385480, Del.Ch., Jun 14, 2004

... DE, for Plaintiff. Morris, Nichols, Arsht & Tunnell, Alan J. Stone (Del.I.D.# 2677), William M. Lafferty (Del.I.D.# 2755), Wilmington, DE, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, D.C., for Defendants. STIPULATION OF DISMISSAL Plaintiff Teachers' Retirement System ...

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5. Twombly v. Bell Atlantic Corp.,
313 F.Supp.2d 174, 2003-2 Trade Cases P 74,189, S.D.N.Y., Oct 08, 2003

... Corp., on the brief), for Defendant BellSouth Corp. Mark C. Hansen, Kellogg, Huber, Hansen, Todd & Evans,

P.L.L.C., Washington, DC (Neil M. Gorsuch and Michael Guzman, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.; Maria T. Galeno, Pillsbury Winthrop, LLP, on the ...

---

6. National Satellite Sports, Inc. v. Time Warner Entertainment Co., L.P.,
255 F.Supp.2d 307, 66 U.S.P.Q.2d 1777, 31 Media L. Rep. 1699, S.D.N.Y., Apr 04, 2003

... Hearn, Robert P. Parker, Paul, Weiss, Rifkind, Wharton & Garrison, New York, Randolph Frank Iannacone, Forster & Iannacone, Middle Village, Neil Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Defendants. MEMORANDUM ORDER RAKOFF, District Judge. Plaintiff National Satellite Sports, ...

---

7. In re QWest Communications International, Inc. Securities Litigation,
241 F.Supp.2d 1119, D.Colo., Nov 25, 2002

... James M. Lyons, Cindy M. Coles-Oliver, Jesus Manuel Vazquez, Jr., Rothgerber, Johnson & Lyons, LLP, Denver, CO, Mark Christian Hansen, Neil McGill Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, PLLC, Washington, DC, for Philip F. Anschutz, Craig D. Slater. ORDER DENYING ...

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8. Verizon Delaware, Inc. v. Covad Communications Co.,
232 F.Supp.2d 1066, N.D.Cal., Nov 13, 2002

... could charge for "customer misdirect." Daniel H. Bookin, Randall Edwards, O'Melveny & Myers, LLP, San Francisco, CA, John H. Longwell, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, Steven F. Benz, for Verizon Delaware, Inc., Verizon New England, ...

... C. Rule 56(f) Request Verizon submits a document entitled "Federal Rule Of Civil Procedure 56(f) Declaration Of Neil M. Gorsuch." In this document, Mr. Gorsuch lists a number of areas about which Verizon would like to take discovery, ...

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9. National Satellite Sports, Inc. v. Time Warner Entertainment Co. L.P.,
217 F.Supp.2d 466, S.D.N.Y., Sep 06, 2002

... 705(a), as amended, 47 U.S.C.A. § 605(a). Michael Dell, Kramer Levin Naftalis & Frankel, LLP, New York City,

for plaintiff. **Neil Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, Henk J. Brands, Eugene M. Paige, Paul, Weiss, Rifkind, Wharton & ...

---

10. Conwood Co., L.P. v. U.S. Tobacco Co.,
290 F.3d 768, 2002-1 Trade Cases P 73,675, 58 Fed. R. Evid. Serv. 1566, 2002 Fed.App. 0171P, 6th Cir.(Ky.), May 15, 2002

... Clifford Craig (briefed), Taft, Stettinius & Hollister, Cincinnati, OH, Richard C. Roberts (briefed), Whitlow, Roberts, Houston & Straub, Paducah, KY, **Neil** M. **Gorsuch** (briefed), Mark C. Hansen (argued and briefed), Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Plaintiffs-Appellees. Neal ...

---

11. Terra Foundation for the Arts v. Perkins,
151 F.Supp.2d 931, N.D.Ill., Jun 29, 2001

... IL, Lawrence E. Levinson, Leonard Garment, Verner, Liipfert, Bernhard, McPherson and Hand, Washington, DC, K. Chris Todd, John H Longwell, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans Washington, DC, for plaintiffs. AUSA, United States Attorney's Office, Chicago, IL, for ...

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12. Zachair, Ltd. v. Driggs,
135 Md.App. 403, 762 A.2d 991, Md.App., Nov 30, 2000

... with the purchaser's right to run the mine; evidence indicated that more than twice the minimum was mined at times. **Neil** M. **Gorsuch** (Mark C. Hansen, Sarah O. Jorgensen and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., on the brief), ...

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13. Conwood Co., L.P. v. U.S. Tobacco Co.,
Not Reported in F.Supp.2d, 2000 WL 33176054, 2000-2 Trade Cases P 73,077, W.D.Ky., Aug 10, 2000

... Paducah, Ky., Robert E. Craddock, Courtnay Stallings Leach, John S. Wilson, III, of McDonnel & Boyd, Memphis, Tenn., Mark Hansen, **Neil** M. **Gorsuch**, Steven F. Benz, Reid M. Figel, Courtney S. Elwood, Benjamin A. Powell, Michael Guzman of Kellogg, Huber, Hansen, ...

---

14. GTE New Media Services, Inc. v. Ameritech

Corp.,
21 F.Supp.2d 27, 1998-2 Trade Cases P 72,316, D.D.C., Sep 28, 1998

... J. Zastrow, Bell Atlantic Network Services, Inc., Arlington, VA, Richard G. Taranto, Farr & Taranto, Washington, DC, Mark C. Hansen, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Bell Atlantic Corporation, and Bell Atlantic Electronic Commerce ...

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15. Zachair, Ltd. v. Driggs,
141 F.3d 1162 (Not selected for publication in the Federal Reporter), 1998 WL 211943 (4th Cir.(Md.)), 1998-1 Trade Cases P 72,139, 4th Cir.(Md.), Apr 30, 1998

... United States District Court for the District of Maryland, at Greenbelt. Andre M. Davis, District Judge. (CA-96-2364-AMD) Mark C. Hansen, **Neil** M. **Gorsuch**, KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Washington, D.C., for Appellant. Lee H. Simowitz, Leonard C. Greenebaum, Shelby ...

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16. J.S. Service Center Corp. v. General Elec. Technical Services Co., Inc.,
937 F.Supp. 216, Fed. Sec. L. Rep. P 99,354, RICO Bus.Disp.Guide 9177, S.D.N.Y., Jul 17, 1996

... Baldwin, of counsel), New York City, for Plaintiffs. Kellogg, Huber, Hansen, Todd & Evans (Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, of counsel), Washington, DC, General Electric Company (E. Scott Gilbert, James DeVine, Eduardo L. Buso, of counsel), New ...

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17. Buford v. H & R Block, Inc.,
168 F.R.D. 340, RICO Bus.Disp.Guide 9123, S.D.Ga., Jul 11, 1996

... 13, 23, 28 U.S.C.A. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Tracy Buford. Paul Wain Painter, Jr., Painter, Ratterree, Connolly ...

... PA, for Bank One. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Robert H. Bacon, April N. Coley, Jamil Parker. ORDER ...

National Review

February 7, 2005, Monday

SECTION: National Review Online

LENGTH: 847 words

HEADLINE: Liberals'n'Lawsuits

BYLINE: By **Neil Gorsuch**

BODY:
Who do you think said this: "Reliance on constitutional lawsuits to achieve policy goals has become a wasting addiction among American progressives... Whatever you feel about the rights that have been gained through the courts, it is easy to see that dependence on judges has damaged the progressive movement and its causes"? Rush Limbaugh? Laura Ingraham? George Bush? The author is David von Drehle, a Washington Post columnist. This admission, by a self-identified liberal, is refreshing stuff. It is a healthy sign for the country and those rethinking the direction of the Democratic party in the wake of November's election results. Let's hope this sort of thinking spreads.

There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, von Drehle recognizes that American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education.

This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide.

At the same time, the politicization of the judiciary undermines the only real asset it has--its independence. Judges come to be seen as politicians and their confirmations become just another avenue of political warfare. Respect for the role of judges and the legitimacy of the judiciary branch as a whole diminishes. The judiciary's diminishing claim to neutrality and independence is exemplified by a recent, historic shift in the Senate's confirmation process. Where trial-court and appeals-court nominees were once routinely confirmed on voice vote, they are now routinely subjected to ideological litmus tests, filibusters, and vicious interest-group attacks. It is a warning sign that our judiciary is losing its legitimacy when trial and circuit-court

judges are viewed and treated as little more than politicians with robes.

As von Drehle recognizes, too much reliance on constitutional litigation is also bad for the Left itself. The Left's alliance with trial lawyers and its dependence on constitutional litigation to achieve its social goals risks political atrophy. Liberals may win a victory on gay marriage when preaching to the choir before like-minded judges in Massachusetts. But in failing to reach out and persuade the public generally, they invite exactly the sort of backlash we saw in November when gay marriage was rejected in all eleven states where it was on the ballot. Litigation addiction also invites permanent-minority status for the Democratic party--Democrats have already failed to win a majority of the popular vote in nine out of the last ten presidential elections and pandering to judges rather than voters won't help change that. Finally, in the greatest of ironies, as Republicans win presidential and Senate elections and thus gain increasing control over the judicial appointment and confirmation process, the level of sympathy liberals pushing constitutional litigation can expect in the courts may wither over time, leaving the Left truly out in the cold.

During the New Deal, liberals recognized that the ballot box and elected branches are generally the appropriate engines of social reform, and liberals used both to spectacular effect--instituting profound social changes that remain deeply ingrained in society today. In the face of great skepticism about the constitutionality of New Deal measures in some corners, a generation of Democratic-appointed judges, from Louis Brandeis to Byron White, argued for judicial restraint and deference to the right of Congress to experiment with economic and social policy. Those voices have been all but forgotten in recent years among liberal activists. It would be a very good thing for all involved--the country, an independent judiciary, and the Left itself--if liberals take a page from David von Drehle and their own judges of the New Deal era, kick their addiction to constitutional litigation, and return to their New Deal roots of trying to win elections rather than lawsuits.

--**Neil Gorsuch** is a lawyer in Washington, D.C.

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The Supreme Court should make clear that securities fraud claims can't dodge the element of causation

BYLINE: By **Neil** M. **Gorsuch** and Paul B. Matey

BODY:
The free ride to fast riches enjoyed by securities class action attorneys in recent years appeared to hit a speed bump on Jan. 12, when the Supreme Court heard arguments in Dura Pharmaceuticals v. Broudo.

The case gives the high court its first chance to explain the doctrine of loss causation in securities fraud litigation. The case is significant because it offers the Court an opportunity to curb frivolous fraud claims merely by enforcing the simple and straightforward causation requirement that Congress wrote into the Private Securities Litigation Reform Act more than a decade ago.

NEW NAME, OLD PROBLEM

The term loss causation is nothing more than a new name for a very old problem. Suppose an investor purchases $50 of stock in a corporation. The value of the investment later declines to $5. Some time after this decline, the corporation announces a restatement of an accounting error. The investor's shares remain at $5.

The investor sues, pointing to the sharp drop in the value of his stock and alleging that the company's earlier accounting misstatement constituted fraud on the market. But can the plaintiff's loss actually be attributed to the corporation's alleged accounting fraud? In most circuits, the answer is no, and a securities fraud claim on these facts would be dismissed for a reason that any first-year law student could explain with ease: an absence of proximate causation.

Whether couched in terms of the defendant's "duty" to the plaintiff or in terms of the "foreseeability" of the particular harm as a result of the defendant's conduct, the common law tort requirement of proximate causation sets limits on recovery as a matter of public policy.

In the Private Securities Litigation Reform Act of 1995, Congress expressly adopted the then-prevailing view in the federal circuit courts that loss causation is a separate and unique element of any securities fraud claim. The PSLRA requires plaintiffs to prove that the defendant's act or omission "caused the loss for which the plaintiff seeks to recover damages." Congress added this requirement specifically to increase the plaintiff's pleading burden in order to deter what legislators believed was an increasing trend in unmeritorious securities fraud claims.

The 3rd, 7th, and 11th circuits have already read this simple and efficient pleading requirement to mean that the defendant's conduct must be a proximate cause of the plaintiff's loss. And that interpretation received a ringing endorsement from the U.S. Court of Appeals for the 2nd Circuit on Jan. 20 as the court affirmed the decision of the late Judge Milton Pollack in Lentell v. Merrill Lynch.

In the Merrill Lynch case, a class of investors in once high-flying Internet startups brought suit for losses suffered after the "irrational exuberance" of the late 1990s diminished and the Internet bubble burst. Eager to find someone to blame for their losses, the plaintiffs filed suit against Merrill Lynch claiming the company deliberately issued falsely positive recommendations in its analyst reports [this despite the fact that the plaintiffs had not even seen a copy of Merrill's reports]. The 2nd Circuit rejected the plaintiffs' construction of the loss causation requirement and held that they failed "to account for the price-volatility risk inherent in the stocks they chose to buy" or to plead any other facts showing that "it was defendant's fraud -- rather than other salient factors -- that proximately caused [their] loss."

FRIVOLOUS CLAIMS

The problem is that securities fraud litigation imposes an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing businesses billions of dollars in settlements every year. Recent studies conclude that, over a five-year period, the average public corporation faces a 9 percent probability of facing at least one securities class action.

Yet despite congressional efforts at reform [first in the PSLRA and then in the Securities Litigation Uniform Standards Act of 1998], the number of securities class actions has not declined. Quite the opposite, in fact, has occurred: In the first six years after the enactment of the PSLRA, the mean number of securities fraud suits rose by an astonishing 32 percent according to one law review article. Another study concluded that, since the enactment of the PSLRA, public companies face a nearly 60 percent greater chance of being sued by shareholders. And the dismissal rate of securities fraud suits between 1996 and 2003 averaged only 8.4 percent.

As Rep. Anna Eshoo [D-Calif.] put it back in 1995, "Businesses in my region place themselves in one of two categories: those who have been sued for securities fraud and those that will be."

One explanation for this trend is that securities fraud class actions are fundamentally different from other types of commercial litigation: Because the amount of damages demanded can be so great, corporations confront the reality that one bad jury verdict could mean bankruptcy. That sobering prospect encourages many responsible corporate fiduciaries to forgo the adversarial process, settling even meritless suits to avoid the risk of financial oblivion. Since the PSLRA's passage, more than 2,000 securities fraud cases have been filed in federal court, yet defendants have taken less than 1 percent to trial. So great is the pressure to settle that in 2004 one defendant agreed to settle a pending class action for $300 million even after the suit was dismissed by the trial court.

The resulting drain on the American economy is substantial. In the last four years alone, securities class action settlements have exceeded $2 billion per year.

LAWYER-DRIVEN MACHINATIONS?

While plaintiffs attorneys have a strong financial incentive to bring even meritless suits if there's a chance they will settle, and defendants have a strong incentive to settle them, neither has a particularly strong incentive to protect class members. Once the scope of the settlement fund is determined, defendants usually have no particular concern how that fund is allocated between shareholders and plaintiffs counsel. And with the threat of adversarial scrutiny from the defendant largely abated, plaintiffs counsel has free rein to seek [and little reason not to try to grab] as large a slice of the settlement fund as possible.

The 3rd Circuit has put the problem this way: Settlement hearings frequently devolve into "pep rallies" in which no party questions the fairness of the settlement and "judges no longer have the full benefit of the adversarial process."

The result is that securities fraud class actions can end up not only harming the company but also failing to help the supposedly wronged shareholders.

FROM BAD TO WORSE

Given the plain meaning of the PSLRA, the legislative history, the scholarship, and the decisions of the 2nd, 3rd, 7th, and 11th circuits, Dura Pharmaceuticals v. Broudo seems like it should be an easy case for the Supreme Court.

On Feb. 24, 1998, Dura announced a revenue shortfall. By the next day, shares in Dura had dropped from $39.125 to $20.75 for a one-day loss of 47 percent. More than eight months later, on Nov. 3, 1998, Dura announced for the first time that the Food and Drug Administration had declined to approve its Albuterol Spiros asthma device. Nonetheless, Dura shares fell only slightly after this announcement. Share prices initially dropped from $12.375 to $9.75, but, within 12 trading days, they had recovered to $12.438, ultimately climbing back to $14 within 90 days. A claim of fraud on the market was brought on behalf of Dura investors, who allege that Dura knew about the possibility that the FDA might not approve Albuterol Spiros in advance and failed to disclose it in Securities and Exchange Commission filings.

Seeking to boost their recovery, the class action plaintiffs never alleged damages based on the brief $2.625 stock price dip after the Nov. 3 disclosure of the supposed fraud. Rather, they demanded recovery based on the much more significant Feb. 24 decline of almost $19. In other words, the plaintiffs sought damages based on a decline in share value that occurred nine months before the disclosure of the alleged fraud.

The facts were as simple, and seemingly insufficient, as if the unfortunate Mrs. Palsgraf had filed suit for a headache she developed before ever leaving for the train station. The District Court agreed and dismissed the action. But the 9th Circuit saw things differently, finding the loss causation requirement satisfied where the plaintiffs "have shown that the price on the date of purchase was inflated because of the misrepresentation."

The economic implications of the 9th Circuit's decision are staggering. Rather than holding companies liable for the damage they inflict on their shareholders as reflected by an actual market decline, the 9th Circuit's rule permits liability to be found and damages to be awarded even when the plaintiff can point to no material

market reaction to a disclosure of alleged fraud.

The 9th Circuit decision would deny courts an important means for weeding out at the pleading stage lawsuits where the alleged fraud had no empirical effect on share price, and thus imposed no demonstrable harm on class members. The decision thus adds fuel to a fire in which virtually every case is settled, and only the lawyers truly win.

A SKEPTICAL SUPREME COURT

Accepting the request of the solicitor general, the Supreme Court granted certiorari to determine whether the 9th Circuit's holding meets the standards established by the PSLRA.

The questions posed by the justices at oral argument earlier this month suggest a fundamental disagreement with the 9th Circuit's logic. Justice Ruth Bader Ginsburg asked: "How could you possibly hook up your loss to the news that comes out later? There is no loss until somehow the bad news comes out." Justice David Souter commented that the plaintiffs' argument "strikes me as an exercise in an inconsistent theory." And Justice Sandra Day O'Connor summed up the problem: "The reason why loss causation is used is because a 'loss' experienced by the plaintiff is 'caused' by the misrepresentation."

These observations demonstrate a sensitivity to the practical impact of the 9th Circuit's decision. By allowing recovery where disclosures do not prompt any stock price decline, the lower court's rule encourages, and in fact depends upon, a return to the use of "junk science": Parties and courts, lacking any empirically verifiable proof of injury, will reach for a grab bag of speculative theories to estimate damages.

Like Daubert v. Merrell Dow Pharmaceuticals Inc. [1993] and its progeny, the loss causation requirement arms courts with a tool to ensure that the legal system compensates fully for empirically confirmable losses, but not for phantom losses where cause-and-effect relationships have not been reliably proved and perhaps cannot be.

Moreover, the 9th Circuit's rule serves to chill investment advice and the free flow of information and the exchange of opinions critical to our capital markets. Without a requirement tying the disclosure of the alleged fraud to a timely market effect, dissatisfied investors will be encouraged to comb through the musings of television investment shows, Internet investment sites and, of course, investment banks, regardless of whether anyone actually listened to them, to find any investment advice proved mistaken by later events and then to sue for damages, claiming that the advice artificially inflated the value of the stock in question.

Such dangers confirm that the 9th Circuit's departure from the essential element of loss causation in claims for fraud is not only doctrinally inconsistent with basic common law tort pleading elements but also bad public policy.

To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes

easy answers are the best solution to easy cases.

Neil M. **Gorsuch** is a partner in D.C.'s Kellogg, Huber, Hansen, Todd, Evans & Figel. He is a former law clerk to Justices Byron White and Anthony Kennedy. Paul B. Matey is an associate at the firm. They filed an amicus brief in Dura Pharmaceuticals on behalf of the U.S. Chamber of Commerce.

THE WALL STREET JOURNAL.

Rule of Law: The Constitutional Case for Term Limits

Gorsuch, Neil, *Guzman, Michael*. **Wall Street Journal**. (Eastern edition). New York, N.Y.: Nov 4, 1992. pg. A15

Voters in 14 states yesterday had a unique opportunity to send a message of change. In addition to electing a president and members of Congress, they also decided whether to limit the terms their congressional representatives may serve.

While the results are not known at this writing, it's clear any successful term limit will face a legal challenge from incumbents loath to yield their seats. Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: "No, none, no legal case can be made for them."

We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved.

Most of the term limit proposals on the ballot yesterday do nothing more than restrict a long-term incumbent's access to the ballot. Rather than flatly forbidding an incumbent who has served more than the allowed number of terms from running again, most simply deny him a spot on the printed ballot for a period of four years. During this period, an incumbent may wage a write-in candidacy and, of course, retain his seat if he wins. (Three current members of Congress -- Rep. Ron Packard, Rep. Joe Skeen and Sen. Strom Thurmond -- won their seats as write-ins.)

While forcing an incumbent to run a write-in campaign significantly hurts his chances for re-election, it does not prevent him from running. Many ballot-access regulations have equally severe consequences for aspiring candidates, and the courts have upheld them.

The Constitution gives states clear authority to impose ballot-access rules. Article I, Section 4 specifically empowers states to regulate the "manner" of congressional elections. States have consistently used this authority to enact comprehensive procedures for gaining access to the ballot. These state-enacted "manner regulations" have survived a variety of legal challenges.

In Storer v. Brown (1974), for example, the Supreme Court considered a California regulation denying ballot access to any independent candidate who had been a registered member of a political party within the past year. Although the rule effectively required two congressional candidates to wait a full term before they could obtain a spot on the ballot -- much as a term limit would compel a long-term incumbent to wait two terms -- the court easily approved it.

Likewise, a district court approved the Pennsylvania ballot-access law that forced Rep. Lawrence Williams to sit out a term. When Mr. Williams lost the Republican primary in May 1974, he tried to secure a place on the November ballot as an independent, but a state rule precluded any primary loser from the general election ballot. Mr. Williams fought the regulation in court without success.

The Supreme Court has consistently upheld manner regulations at least as severe as term limits. In Davis v. Bandemer (1986), the court approved virtually all state political gerrymandering schemesno matter how hard on individual candidates. It did so despite the fact that state legislatures often draw wildly contorted district lines specifically to deny certain individuals any realistic hope of winning, and despite the fact that these lines often remain in place for 10 years or more until the next census and redistricting.

A rarely discussed constitutional detail also gives courts little incentive to invalidate term limits. Although Article I authorizes states to regulate congressional elections, it also authorizes Congress to override any manner regulation by a simple majority vote. Why then, a court might wonder, should it protect incumbents from their constituents when incumbents have in hand the power to protect themselves?

Opponents of term limits argue that term limits are not ballot-access regulations but qualifications for office.

This is an attempt to place term limits in a different legal category. The Constitution lists three qualifications for members of Congress: He must be of a requisite age, a U.S. citizen for an established period and an inhabitant of the state he represents. Opponents say term limits effectively add a fourth qualification: namely, that no candidate may be a long-term incumbent.

If viewed as a qualification, a term limit would almost certainly be unconstitutional. The Supreme Court in Powell v. McCormack (1969) concluded that Congress may not add to the established qualifications. In that case, the House had refused to seat Adam Clayton Powell Jr. citing his alleged ethical improprieties. The court, however, ordered the House to seat Powell, arguing that if Congress could set its own qualifications for membership it might use those powers to exclude duly elected representatives for any number of politically motivated reasons.

But the attempt to label term limits as "qualifications" overlooks the fact that the regulation at issue in Powell flatly banned an elected representative from office. Term limits leave incumbents free to wage write-in campaigns and to regain a ballot spot after a few years.

More important, the Supreme Court has already rejected the argument that state ballot-access regulations are really qualifications. In Storer, Justice Byron White dismissed that argument as "wholly without merit." Even Justice William Brennan's dissent in that case, which emphasized the "impossible burden" California had placed on independent candidates, never suggested that the ballot-access procedures at issue constituted qualifications.

Indeed, as both Storer and Williams show, judges have been reluctant to view ballot-access regulations as qualifications. They sense correctly that they would be stepping into a legal morass. There are a huge number of ballot-access rules, and a clever lawyer can argue that any of them creates some sort of qualification. Even the simple requirement that an independent candidate gather a certain number of signatures before being included on the ballot -- a requisite in nearly every state -- could be described as imposing a fourth qualification that he demonstrate quantifiable popular support.

Finally, the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers -- a desire to secure broad political participation and promote a representative legislature.

Mr. Gorsuch is a Marshall Scholar at Oxford. Mr. Guzman is a legal assistant at the Iran-U.S. Claims Tribunal in The Hague.

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Bullock, Katja – Candidate Files

Gorsuch, Neil [Folder 1]

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EXPERIENCE

KELLOGG, HUBER, HANSEN, TODD & EVANS, Washington, D.C.
Partner, January 1998-present; Associate, 1995-1997.
Representation of corporate and individual clients in complex civil matters before trial and appellate courts.

SUPREME COURT OF THE UNITED STATES, Washington D.C.
Law clerk to Justice Byron R. White (Retired) and Justice Anthony M. Kennedy, 1993-94.

UNITED STATES COURT OF APPEALS, D.C. CIRCUIT, Washington, D.C.
Law clerk to U.S. Circuit Judge David B. Sentelle, 1991-92.

Summer Associate:
Sullivan & Cromwell, Washington, D.C., 1991
Cravath, Swaine & Moore, New York, 1990
Davis, Graham & Stubbs, Denver, CO, 1989

EDUCATION

OXFORD UNIVERSITY, Oxford, England.
Marshall Scholar, University College, 1992-93; 1994-95.

HARVARD LAW SCHOOL, Cambridge, MA
J.D. 1991 *cum laude.*
Harvard Journal of Law & Public Policy, Senior Editor.
Head Teaching Fellow, political philosophy course at Harvard College.
Harvard Defenders: Represented indigent criminal defendants in Boston courts.

COLUMBIA UNIVERSITY, New York, N.Y.
B.A. 1988, Political Science, with honors.
G.P.A. 3.95. Phi Beta Kappa, early induction (top 2% of class).
Harry S. Truman Scholar (100 scholars chosen annually by U.S. government).
Member, senior honor society; elected class marshal by faculty.
Graduated in three years.
Founded and edited Columbia's conservative weekly newspaper.
Columnist, Columbia Daily Spectator.

PUBLICATIONS, PRESENTATIONS

"The Right to Assisted Suicide and Euthanasia," 23 Harvard Journal of Law & Public Policy 599 (2000); Co-author, "Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits," 20 Hofstra Law Review 341 (1991); Co-author, "The Constitutional Case for Term Limits," Wall Street Journal, November 4, 1992; Presentation on Appellate Advocacy, Wisconsin State Bar Association (2000).

PERSONAL

High school national debate champion, John Stennis Award; Volunteer, 1992 Bush campaign and various other Republican campaigns. Intern to Sen. William Armstrong (R-Colo), 1982; U.S. Senate Page, 1983; Congressional Affairs Assistant, Department of the Interior, 1984. Enjoy fly fishing, skiing, kayaking. Married; one daughter.

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Born [(b)(6)]; admitted to bar, 1992, New York; 1994, Colorado; 1997, District of Columbia; 1998, U.S. Supreme Court. Education: Columbia University (B.A., 1988); Harvard Law School (J.D., *cum laude*, 1991); Oxford University, University College (1992-1995). Phi Beta Kappa. Marshall Scholar. Truman Scholar. Law Clerk: Hon. David B. Sentelle, U.S. Court of Appeals, District of Columbia Circuit, 1991-1992; Hon. Byron R. White, U.S. Supreme Court, 1993-1994. Articles published by, among others, the Wall Street Journal, United Press International, Harvard Journal of Law & Public Policy, and the Cato Institute. Practice areas: Litigation; Antitrust.

Neil Gorsuch

Contributor	Occupation	Date	Amount	Recipient
GORSUCH, NEIL WASHINGTON, DC 20005	ATTORNEY	8/13/1999	$300	Frist, Bill
GORSUCH, NEIL M MR WASHINGTON, DC 20005		2/25/2000	$250	McCain, John
GORSUCH, NEIL M MR WASHINGTON, DC 20005	KELLOGG HUBER/ATTORNEY	5/31/2000	$250	Bush, George W

2000 cycle data downloaded from FEC on November 1, 2001.

PPO A.D. Myers DATE RECEIVED BY OPA: _____ DATE DUE TO PPO: _____ POTUS Mtg. Date (if applicable) _____

NAME: Neil Gorsuch

HOME/VOTING ADDRESS: (b)(6)
(b)(6)

POTENTIAL AGENCY/POSITION: DOJ / DAAG (OLC)

____PAS ____PA X SES X SKC ____B/C X PERMANENT ____ TEMPORARY

REC 1: _____ POSITION OF REC 1: _____

REC 2: _____ POSITION OF REC 2: _____

POLITICAL CHECK: _____

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____ VOTE CHECK _____

____ FEC _____

____ CONFIRM RECOMMENDER _____

____ B/C STATE LEADERSHIP

Talked to: _____ Position: _____ Approve (Y/N): ____
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Talked to: _____ Position: _____ Approve (Y/N): ____
Notes:

____APPROVE ____ DENY _____ _____ _____
OFFICE OF POLITICAL AFFAIRS RANK DATE

1 – Known to OPA
2 – Unknown to OPA – full political check completed
3 – Unknown to OPA – abbreviated political check
4 – unknown to OPA – no political check completed because _____

3/21/05

Name, Last	First	Middle	Title	Occupation
GORSUCH	NEIL	M.		Attorney

Position Sought	Position	Firm / Agency
DAAG-OLC, DOJ	**Partner** 1998 – Present	Kellogg, Huber, Hansen, Todd & Evans

Notables

- **Gorsuch's Mother, The Late Anne M. Gorsuch Burford, Was Former Environmental Protection Agency Director During The Reagan Administration.**
- **In A *National Review* Online Article, Gorsuch Criticized Excessive Litigation, Claiming "American Liberals Have Become Addicted To The Courtroom."** "There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, … American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education. This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide." (*National Review* Online, 2/7/05) (Article Attached)
- **In A Lengthy *Legal Times* Article, Gorsuch Argued The Supreme Court Should Clarify Securities Fraud Laws.** "To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes easy answers are the best

solution to easy cases." (*Legal Times*, 1/31/05) (Article Attached)

- **Gorsuch Commented On Securities Fraud Case, Regarding Question Of Whether One Can Sue For Fraud Despite Not Suffering Financial Loss.** "If you buy a company's stock at $10 a share, then learn the company inflated the stock's value, should you be able to sue for securities fraud – even if you sold the stock with no financial loss? This is the question going before the U.S. Supreme Court Wednesday (Jan. 12) in a case involving former San Diego drug company Dura Pharmaceuticals Inc. and investors who say they were victimized by Dura's misrepresentations about its stock. The high court's ruling could affect anyone who buys or sells stocks, or anyone who invests in mutual funds that buy and sell stocks on their behalf. 'This is a case of extreme importance in securities law,' said Neil Gorsuch, an attorney representing the U.S. Chamber of Commerce, which is siding with Dura in the case known as Dura Pharmaceuticals Inc. vs. Michael Broudo. 'The whole question is whether damages should be tied to (money) actually lost, or whether you're going to permit damages ... not tied to shareholders' actual losses.'" (*Copley News Service*, 1/5/05)

- **Gorsuch Signed Letter Criticizing Clerks Who Disclosed Confidential Information About Supreme Court Deliberations Regarding The 2000 Election.** "According to an article recently published in *Vanity Fair* magazine [David Margolick, Evgenia Peretz, and Michael Shnayerson, 'The Path to Florida,' *Vanity Fair*, Oct. 2004, at 310], a number of former U.S. Supreme Court law clerks, who served during the Court's October 2000 term in which Bush v. Palm Beach County and Bush v. Gore were decided, intentionally disclosed to a reporter confidential information about the Court's internal deliberations in those cases. If true, these breaches of each clerk's duty of confidentiality to his or her appointing justice -- and to the Court as an institution – cannot be excused as acts of 'courage' or something the clerks were 'honor-bound' to do. ... To the contrary, this is conduct unbecoming any attorney or legal adviser working in a position of trust. Furthermore, it is behavior that violates the Code of Conduct to which all Supreme Court clerks, as the article itself acknowledges, agree to be bound. Although the signatories below have differing views on the merits of the Supreme Court's decisions in the election cases of 2000, they are unanimous in their belief that it is inappropriate for a Supreme Court clerk to disclose confidential information, received in the course of the law clerk's duties, pertaining to the work of the Court. Personal disagreement with the substance of a decision of the Court [including the decision to grant a writ of certiorari] does not give any law clerk license to breach his or her duty of confidentiality or 'justif[y] breaking an obligation [he or she would] otherwise honor.'" (*Legal Times*, 9/27/04)

- **Gorsuch Praised Ruling Awarding Columbia Hospital For Women Medical Center $18.2 Million In Damages.** "A D.C. Superior Court jury awarded the defunct Columbia Hospital for Women Medical Center $18.2 million in damages, agreeing with the hospital that a malpractice insurance company had overcharged for premiums and encouraged doctors to practice elsewhere. ... The jury rejected claims by NCRIC in a 2000 lawsuit that Columbia had failed to pay $3 million in premiums and interest. ... The 136-year-old hospital closed in May 2002, citing severe financial problems. Columbia attorney Neil M. Gorsuch said of the verdict, returned on Friday: 'We feel that justice was done and are gratified that the jury, after a 21/2-week trial and significant deliberations, rendered a verdict confirming that NCRIC tortiously interfered with the operations of Columbia Hospital for Women.'" (*Legal Times*, 4/26/04)
- **In A Letter To The Editor, Gorsuch Criticized John Barrett For Accusing Court Overseeing Independent Counsel Of A "Partisan" Agenda.** "The March 9 front-page article on the three- judge panel overseeing the independent counsel law noted that the court recently denied the attorney fee applications of some targets in the Whitewater investigation on the ground that the Justice Department would have examined their actions even without the independent counsel statute. In the article, John Barrett, who worked in the independent counsel's office during the Iran-contra investigation, charges that the court's rationale is a cover for a 'partisan' agenda because the Justice Department investigated violations of the Boland Amendment before independent counsel Lawrence Walsh was appointed, yet the court approved some fee awards for people caught up in the Iran-contra investigation. But the article nowhere discloses a fact that precludes such claims of partisanship: None of the independent counsels in the Iran-contra affair contested fee applications arising from that investigation on the ground that the Justice Department already had started an investigation of Boland Amendment violations. If Mr. Walsh's team (on which Mr. Barrett served) knew of such 'facts' and failed to share them with the court, the fault plainly lies there. Courts rule only on the evidence that the parties present. The article also said that the presiding judge of the panel, David Sentelle (for whom I clerked years ago), named his daughter Reagan after the president who appointed him to the court. But Judge Sentelle's daughter was born in 1970, and Ronald Reagan appointed Mr. Sentelle to the court in 1985, when his daughter was 15. This is at least the second time *The Post* has printed this apocryphal story. And by the way, the article was kind to enough to say that Mr. Sentelle is 59; he is, in fact, 61." (*The Washington Post*, 3/18/04)
- **Gorsuch Claimed Both Parties Impose Litmus Tests On Judicial Nominees, Which "Serves To Weaken The Public Confidence In The Courts."** "Today,

there are too many who are concerned less with promoting the best public servants and more with enforcing litmus tests and locating unknown 'stealth candidates' who are perceived as likely to advance favored political causes once on the bench. Politicians and pressure groups on both sides declare that they will not support nominees unless they hew to their own partisan creeds. When a favored candidate is voted down for lack of sufficient political sympathy to those in control, grudges are held for years, and retaliation is guaranteed. Whatever else might be said about the process today, excellence plainly is no longer the dispositive virtue, as it was to President Kennedy. The facts are undeniable. Today, half of the seats on the Sixth Circuit remain unfilled because of partisan bickering over ideological 'control' of that circuit. The D.C. Circuit operates at just two-thirds strength. Almost 20 percent of the seats on the courts of appeals and nearly 100 judgeships nationwide are vacant. The administrative office of the U.S. Courts has declared 32 judicial vacancy 'emergencies' in courts where filings are in excess of 600 cases per district judge or 700 cases per appellate panel. Meanwhile, some of the most impressive judicial nominees are grossly mistreated. Take Merrick Garland and John Roberts, two appointees to the U.S. Court of Appeals in Washington, D.C. Both were Supreme Court clerks. Both served with distinction at the Department of Justice. Both are widely considered to be among the finest lawyers of their generation. Garland, a Clinton appointee, was actively promoted by Republican Sen. Orrin Hatch of Utah. Roberts, a Bush nominee, has the backing of Seth Waxman, President Bill Clinton's solicitor general. But neither Garland nor Roberts has chosen to live his life as a shirker; both have litigated controversial cases involving 'hot-button' issues. ... Responsibility for the current morass does not rest with any one party or group; ample blame can be doled out all around. But litmus tests, grudge matches and payback are not the ways forward. Excellence is. As Lloyd Cutler, White House counsel to President Clinton, explained in testimony to the Senate Judiciary Committee last year, 'to make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong as a matter of political science; it also serves to weaken the public confidence in the courts.'" (*United Press International*, 5/4/02)

- **In A 2000 Publication Titled "The Right To Assisted Suicide And Euthanasia," Gorsuch Said The "Legal History Of Assisted Suicide And Euthanasia ... Concludes That Little Historical Antecedent Supports Treating Them As 'Rights.'"** (Questia Online Library Website, http://www.questia.com/PM.qst?a=o&d=5001776263, Accessed 3/15/05)
- **Gorsuch Represented Firm Awarded $350 Million From U.S. Tobacco.** "CASE TYPE: antitrust CASE: Conwood Co. L.P. v. U.S. Tobacco Co., No.

5:98-CV-108-R (W.D. Ky.) PLAINTIFF'S ATTORNEYS: Richard C. Roberts of Paducah, Ky.'s Whitlow, Roberts, Houston & Straub; Mark C. Hansen, Neil M. Gorsuch, Michael J. Guzman and Benjamin A. Powell of Washington, D.C.'s Kellogg, Huber, Hansen, Todd & Evans DEFENSE ATTORNEYS: Neal R. Stoll, James A. Keyte, Chris T. Athanasia, Matthew Barnett and Rachel Mariner of New York's Skadden, Arps, Slate, Meagher & Flom; and John S. Reed II and Ridley M. Sandidge of Louisville, Ky.'s Reed Weitkamp Schell & Vice ... On March 28, a Paducah, Ky., jury awarded Conwood $350 million. This was trebled automatically, under federal antitrust law, and entered at $1.05 billion the following day. U.S. Tobacco filed motions for remittitur, a new trial and judgment as a matter of law; these were denied on Aug. 10. The verdict has been appealed to the U.S. Court of Appeals for the 6th Circuit, said defense counsel Neal R. Stoll: 'We do not believe this is a valid claim.'" (*The National Law Journal*, 2/19/01)

- **Gorsuch Represented Plaintiffs Who Brought Class Actions Against Banks, Alleging They Had Been Defrauded.** "The U.S. Court of Appeals for the Eleventh Circuit, in a case that has ramifications concerning class actions brought against banks and other financial institutions, affirmed the denial of class certification to a potential nationwide RICO class of as many as 10 million claimants. The court's two-page order, issued on June 9, characterized the 52-page opinion written by District Judge William T. Moore, Jr., as 'exhaustive.' Judge Moore, in a case of first impression, denied class certification to the plaintiffs on, July 11, 1996 (see CRR, Aug. 27, 1996, p. 7). The plaintiffs claimed they had been defrauded when they obtained tax refund anticipation loans from various banks through H&R Block and other 'electronic filers' of individual tax returns. The Judge held that the need for individual proof of reliance to establish each class member's RICO claim rendered that claim unsuited for class treatment because common issues would not predominate over individual issues and the case would not be manageable as a class action. ... Buford, et al. v. H&R Block, Inc., et al., 11th Cir., No. 96-8969, 6/9/97 Counsel for Plaintiffs: Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, Ga., Mark C. Hansen, Jeffrey A. Lamken, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washing-ton, D.C. Counsel for Defendants: Burt M. Rublin, Alan S. Kaplinsky and Walter M. Einhorn, Jr. of Ballard Spahr Andrews & Ingersoll, Philadelphia, Pa." (*Civil RICO Report*, 7/23/97)
- **Gorsuch Said Term Limits Are Constitutional.** "Cato's position, laid out in a study by attorneys Neil Gorsuch and Michael Guzman, is that the limits are constitutionally permissible under the doctrine that states can regulate the manner in which elections are held. 'In recent years states have enacted procedures, and the Supreme Court has upheld them,' says Mr. Pilon. 'The state has a right to

regulate.'" (*The National Law Journal*, 11/16/92)

- **In A *Wall Street Journal* Op-Ed, Gorsuch Argued The Constitutionality Of Term Limits.** "Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: 'No, none, no legal case can be made for them.' ... We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved. ... the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers – a desire to secure broad political participation and promote a representative legislature." (*The Wall Street Journal*, 11/4/92) (Op-Ed Attached)
- **Gorsuch Represented Company That Claimed Contract Was Terminated Because They Refused To Agree To Bribery Scheme; Claim Was Rejected Due To Only Indirect Injury.** "The Southern District of New York held that a company whose contract was allegedly terminated because the company failed to agree to a RICO bribery scheme was only injured indirectly by the scheme and therefore had no standing. Plaintiffs J.S. Service Center Corporation and Sercenco, S.A. (collectively Sercenco) alleged that General Electric Technical Services Company, Inc. and General Electric Company (collectively GE) engaged in a scheme to bribe officials at an electric plant in Peru. ... J.S. Service Center Corp. v. General Electric Technical Services Company, Inc., S.D.N.Y. 95 Civ. 3979, 7/17/96 Opinion by District Judge William C. Conner Counsel for Plaintiffs: Alan G. Blumberg, Joy Feigenbaun, Martin Bienstock, Linda Baldwin, Szold & Brandwen, P.C., New York, N.Y. Counsel for Defendants: Mark C. Hanson, Jeffrey A. Lamken, Neil M, Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, D.C., E. Scott Gilbert, James DeVine, Eduardo L. Buso, New York, N.Y." (*Civil RICO Report*, 9/30/96)
- **Gorsuch Said The Supreme Court Interprets Qualifications Clauses Of The Constitution Narrowly.** "The Supreme Court has generally struck down ballot access restrictions only if they discriminate against the poor or minor parties. In 1974, in Storer v. Brown, the court upheld a California law barring independents from congressional races who had belonged to another party within 11 months of the election. The court dismissed arguments that this added another qualification for Congress as 'wholly without merit.' A decade later, in Clements v. Fashing, the court upheld a Texas 'serve-your-term' law barring incumbents from seeking

another office until their current terms had expired. The court found the two-year waiting period mandated by the law a 'de minimus burden.' The court has also found constitutional state laws that barred entire groups of people from holding office. The Hatch Act, passed by Congress in 1939, prohibits most federal employees from running for any elective office. In 1973, the court upheld an Oklahoma law that imposed the Hatch Act's curbs on state employees. A forthcoming study by Neil Gorsuch and Michael Guzman for the Cato Institute finds that the Supreme Court has chosen to construe the qualifications clauses of the Constitution very narrowly. 'Indeed, it has used these clauses to strike down a legislative act only twice,' they note. 'By contrast, the Court has put Article I, Section 4 to ample use,' and allowed states a largely free rein in writing their own election laws to reflect local preferences." (*The Wall Street Journal*, 8/5/92)

- **As An Attorney, Gorsuch Has Been Cited In Many Court Cases.** (See Attached Pages)

Flags

(b)(6)

Campaign Contributions

Gorsuch, Neil M Mr.
9/17/2004 $250.00
Washington, DC 20036
Kellogg Huber Hansen/Lawyer -[Contribution]
REPUBLICAN NATIONAL COMMITTEE

GORSUCH, NEIL M MR.
8/19/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

GORSUCH, NEIL M MR.
6/26/2003 $1,000.00
VIENNA, VA 22182
KELLOGG HUBER HANSEN TODD & EVANS/L -[Contribution]
BUSH-CHENEY '04 (PRIMARY) INC

Gorsuch, Neil M. Mr.
5/31/2000 $250.00
Washington, DC 20005
Kellogg Huber/Attorney -[Contribution]
BUSH FOR PRESIDENT INC

Gorsuch, Neil M. Mr.
2/25/2000 $250.00
Washington, DC 20005
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MCCAIN 2000 INC

GORSUCH, NEIL
8/13/1999 $300.00
WASHINGTON, DC 20005
ATTORNEY -[Contribution]
FRIST 2000 INC

Lentell v. Merrill Lynch & Co., Inc.,
396 F.3d 161, 2nd Cir.(N.Y.), Jan 20, 2005
... the brief) for Amicus State of New York. David C. Frederick, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC (**Neil** M. **Gorsuch**, Paul B. Matey, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC; Robin S. Conrad, Stephanie A. Martz, ...

2. **Z-Tel Communications, Inc. v. SBC Communications, Inc.**,
331 F.Supp.2d 513, 2004-2 Trade Cases P 74,534, RICO Bus.Disp.Guide 10,741, E.D.Tex., Aug 06, 2004

... Pickett & Lee, Texarkana, TX, Aaron M. Panner, Colin S. Stretch, Eugene M. Paige, Mark C. Hansen, Michael K. Kellogg, **Neil** M. **Gorsuch**, Kellogg Huber Hansen Todd & Evans, Washington, DC, Martin E. Grambow, William M. Schur, San Antonio, TX, for ...

3. **Z-Tel Communications, Inc. v. SBC Communications, Inc.**,
331 F.Supp.2d 567, 2004-2 Trade Cases P 74,533, E.D.Tex., Aug 06, 2004

... assessing motion to transfer venue, law focuses on effects, rather than location, of alleged harm-triggering conduct. 28 U.S.C.A. § 1404(a). **Neil** M **Gorsuch**, Kellogg Huber Hansen Todd & Evans, Washington, DC, for Ameritech Corporation, Illinois Bell Telephone Company, Indiana Bell Telephone ...

4. **Teachers' Retirement System of Louisiana v. Regal Entertainment Group**,
Not Reported in A.2d, 2004 WL 1385480, Del.Ch., Jun 14, 2004

... DE, for Plaintiff. Morris, Nichols, Arsht & Tunnell, Alan J. Stone (Del.I.D.# 2677), William M. Lafferty (Del.I.D.# 2755), Wilmington, DE, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, D.C., for Defendants. STIPULATION OF DISMISSAL Plaintiff Teachers' Retirement System ...

5. **Twombly v. Bell Atlantic Corp.**,
313 F.Supp.2d 174, 2003-2 Trade Cases P 74,189, S.D.N.Y., Oct 08, 2003

... Corp., on the brief), for Defendant BellSouth Corp. Mark C. Hansen, Kellogg, Huber, Hansen, Todd & Evans,

P.L.L.C., Washington, DC (Neil M. Gorsuch and Michael Guzman, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.; Maria T. Galeno, Pillsbury Winthrop, LLP, on the ...

6. National Satellite Sports, Inc. v. Time Warner Entertainment Co., L.P.,
255 F.Supp.2d 307, 66 U.S.P.Q.2d 1777, 31 Media L. Rep. 1699, S.D.N.Y., Apr 04, 2003

... Hearn, Robert P. Parker, Paul, Weiss, Rifkind, Wharton & Garrison, New York, Randolph Frank Iannacone, Forster & Iannacone, Middle Village, Neil Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Defendants. MEMORANDUM ORDER RAKOFF, District Judge. Plaintiff National Satellite Sports, ...

7. In re QWest Communications International, Inc. Securities Litigation,
241 F.Supp.2d 1119, D.Colo., Nov 25, 2002

... James M. Lyons, Cindy M. Coles-Oliver, Jesus Manuel Vazquez, Jr., Rothgerber, Johnson & Lyons, LLP, Denver, CO, Mark Christian Hansen, Neil McGill Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, PLLC, Washington, DC, for Philip F. Anschutz, Craig D. Slater. ORDER DENYING ...

8. Verizon Delaware, Inc. v. Covad Communications Co.,
232 F.Supp.2d 1066, N.D.Cal., Nov 13, 2002

... could charge for "customer misdirect." Daniel H. Bookin, Randall Edwards, O'Melveny & Myers, LLP, San Francisco, CA, John H. Longwell, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, Steven F. Benz, for Verizon Delaware, Inc., Verizon New England, ...

... C. Rule 56(f) Request Verizon submits a document entitled "Federal Rule Of Civil Procedure 56(f) Declaration Of Neil M. Gorsuch." In this document, Mr. Gorsuch lists a number of areas about which Verizon would like to take discovery, ...

9. National Satellite Sports, Inc. v. Time Warner Entertainment Co. L.P.,
217 F.Supp.2d 466, S.D.N.Y., Sep 06, 2002

... 705(a), as amended, 47 U.S.C.A. § 605(a). Michael Dell, Kramer Levin Naftalis & Frankel, LLP, New York City,

for plaintiff. Neil Gorsuch, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, Henk J. Brands, Eugene M. Paige, Paul, Weiss, Rifkind, Wharton & ...

10. Conwood Co., L.P. v. U.S. Tobacco Co.,
290 F.3d 768, 2002-1 Trade Cases P 73,675, 58 Fed. R. Evid. Serv. 1566, 2002 Fed.App. 0171P, 6th Cir.(Ky.), May 15, 2002

... Clifford Craig (briefed), Taft, Stettinius & Hollister, Cincinnati, OH, Richard C. Roberts (briefed), Whitlow, Roberts, Houston & Straub, Paducah, KY, Neil M. Gorsuch (briefed), Mark C. Hansen (argued and briefed), Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Plaintiffs-Appellees. Neal ...

11. Terra Foundation for the Arts v. Perkins,
151 F.Supp.2d 931, N.D.Ill., Jun 29, 2001

... IL, Lawrence E. Levinson, Leonard Garment, Verner, Liipfert, Bernhard, McPherson and Hand, Washington, DC, K. Chris Todd, John H Longwell, Neil M. Gorsuch, Kellogg, Huber, Hansen, Todd & Evans Washington, DC, for plaintiffs. AUSA, United States Attorney's Office, Chicago, IL, for ...

12. Zachair, Ltd. v. Driggs,
135 Md.App. 403, 762 A.2d 991, Md.App., Nov 30, 2000

... with the purchaser's right to run the mine; evidence indicated that more than twice the minimum was mined at times. Neil M. Gorsuch (Mark C. Hansen, Sarah O. Jorgensen and Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., on the brief), ...

13. Conwood Co., L.P. v. U.S. Tobacco Co.,
Not Reported in F.Supp.2d, 2000 WL 33176054, 2000-2 Trade Cases P 73,077, W.D.Ky., Aug 10, 2000

... Paducah, Ky., Robert E. Craddock, Courtnay Stallings Leach, John S. Wilson, III, of McDonnel & Boyd, Memphis, Tenn., Mark Hansen, Neil M. Gorsuch, Steven F. Benz, Reid M. Figel, Courtney S. Elwood, Benjamin A. Powell, Michael Guzman of Kellogg, Huber, Hansen, ...

14. GTE New Media Services, Inc. v. Ameritech

Corp.,
21 F.Supp.2d 27, 1998-2 Trade Cases P 72,316, D.D.C., Sep 28, 1998

... J. Zastrow, Bell Atlantic Network Services, Inc., Arlington, VA, Richard G. Taranto, Farr & Taranto, Washington, DC, Mark C. Hansen, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C., Washington, DC, for Bell Atlantic Corporation, and Bell Atlantic Electronic Commerce ...

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15. Zachair, Ltd. v. Driggs,
141 F.3d 1162 (Not selected for publication in the Federal Reporter), 1998 WL 211943 (4th Cir.(Md.)), 1998-1 Trade Cases P 72,139, 4th Cir.(Md.), Apr 30, 1998

... United States District Court for the District of Maryland, at Greenbelt. Andre M. Davis, District Judge. (CA-96-2364-AMD) Mark C. Hansen, **Neil** M. **Gorsuch**, KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C., Washington, D.C., for Appellant. Lee H. Simowitz, Leonard C. Greenebaum, Shelby ...

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16. J.S. Service Center Corp. v. General Elec. Technical Services Co., Inc.,
937 F.Supp. 216, Fed. Sec. L. Rep. P 99,354, RICO Bus.Disp.Guide 9177, S.D.N.Y., Jul 17, 1996

... Baldwin, of counsel), New York City, for Plaintiffs. Kellogg, Huber, Hansen, Todd & Evans (Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, of counsel), Washington, DC, General Electric Company (E. Scott Gilbert, James DeVine, Eduardo L. Buso, of counsel), New ...

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17. Buford v. H & R Block, Inc.,
168 F.R.D. 340, RICO Bus.Disp.Guide 9123, S.D.Ga., Jul 11, 1996

... 13, 23, 28 U.S.C.A. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Tracy Buford. Paul Wain Painter, Jr., Painter, Ratterree, Connolly ...

... PA, for Bank One. Charles M. Jones, Jones, Osteen, Jones & Arnold, Hinesville, GA, Mark C. Hansen, Jeffrey A. Lamken, **Neil** M. **Gorsuch**, Kellogg, Huber, Hansen, Todd & Evans, Washington, DC, for Robert H. Bacon, April N. Coley, Jamil Parker. ORDER ...

National Review

February 7, 2005, Monday

SECTION: National Review Online

LENGTH: 847 words

HEADLINE: Liberals'n'Lawsuits

BYLINE: By **Neil Gorsuch**

BODY:
Who do you think said this: "Reliance on constitutional lawsuits to achieve policy goals has become a wasting addiction among American progressives... Whatever you feel about the rights that have been gained through the courts, it is easy to see that dependence on judges has damaged the progressive movement and its causes"? Rush Limbaugh? Laura Ingraham? George Bush? The author is David von Drehle, a Washington Post columnist. This admission, by a self-identified liberal, is refreshing stuff. It is a healthy sign for the country and those rethinking the direction of the Democratic party in the wake of November's election results. Let's hope this sort of thinking spreads.

There's no doubt that constitutional lawsuits have secured critical civil-right victories, with the desegregation cases culminating in Brown v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases, von Drehle recognizes that American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education.

This overweening addiction to the courtroom as the place to debate social policy is bad for the country and bad for the judiciary. In the legislative arena, especially when the country is closely divided, compromises tend to be the rule the day. But when judges rule this or that policy unconstitutional, there's little room for compromise: One side must win, the other must lose. In constitutional litigation, too, experiments and pilot programs--real-world laboratories in which ideas can be assessed on the results they produce--are not possible. Ideas are tested only in the abstract world of legal briefs and lawyers arguments. As a society, we lose the benefit of the give-and-take of the political process and the flexibility of social experimentation that only the elected branches can provide.

At the same time, the politicization of the judiciary undermines the only real asset it has--its independence. Judges come to be seen as politicians and their confirmations become just another avenue of political warfare. Respect for the role of judges and the legitimacy of the judiciary branch as a whole diminishes. The judiciary's diminishing claim to neutrality and independence is exemplified by a recent, historic shift in the Senate's confirmation process. Where trial-court and appeals-court nominees were once routinely confirmed on voice vote, they are now routinely subjected to ideological litmus tests, filibusters, and vicious interest-group attacks. It is a warning sign that our judiciary is losing its legitimacy when trial and circuit-court

judges are viewed and treated as little more than politicians with robes.

As von Drehle recognizes, too much reliance on constitutional litigation is also bad for the Left itself. The Left's alliance with trial lawyers and its dependence on constitutional litigation to achieve its social goals risks political atrophy. Liberals may win a victory on gay marriage when preaching to the choir before like-minded judges in Massachusetts. But in failing to reach out and persuade the public generally, they invite exactly the sort of backlash we saw in November when gay marriage was rejected in all eleven states where it was on the ballot. Litigation addiction also invites permanent-minority status for the Democratic party--Democrats have already failed to win a majority of the popular vote in nine out of the last ten presidential elections and pandering to judges rather than voters won't help change that. Finally, in the greatest of ironies, as Republicans win presidential and Senate elections and thus gain increasing control over the judicial appointment and confirmation process, the level of sympathy liberals pushing constitutional litigation can expect in the courts may wither over time, leaving the Left truly out in the cold.

During the New Deal, liberals recognized that the ballot box and elected branches are generally the appropriate engines of social reform, and liberals used both to spectacular effect--instituting profound social changes that remain deeply ingrained in society today. In the face of great skepticism about the constitutionality of New Deal measures in some corners, a generation of Democratic-appointed judges, from Louis Brandeis to Byron White, argued for judicial restraint and deference to the right of Congress to experiment with economic and social policy. Those voices have been all but forgotten in recent years among liberal activists. It would be a very good thing for all involved--the country, an independent judiciary, and the Left itself--if liberals take a page from David von Drehle and their own judges of the New Deal era, kick their addiction to constitutional litigation, and return to their New Deal roots of trying to win elections rather than lawsuits.

--**Neil Gorsuch** is a lawyer in Washington, D.C.

Legal Times

January 31, 2005

SECTION: POINTS OF VIEW; Pg. 52

LENGTH: 2120 words

HEADLINE: No Loss, No Gain;
The Supreme Court should make clear that securities fraud claims can't dodge the element of causation

BYLINE: By **Neil** M. **Gorsuch** and Paul B. Matey

BODY:
The free ride to fast riches enjoyed by securities class action attorneys in recent years appeared to hit a speed bump on Jan. 12, when the Supreme Court heard arguments in Dura Pharmaceuticals v. Broudo.

The case gives the high court its first chance to explain the doctrine of loss causation in securities fraud litigation. The case is significant because it offers the Court an opportunity to curb frivolous fraud claims merely by enforcing the simple and straightforward causation requirement that Congress wrote into the Private Securities Litigation Reform Act more than a decade ago.

NEW NAME, OLD PROBLEM

The term loss causation is nothing more than a new name for a very old problem. Suppose an investor purchases $50 of stock in a corporation. The value of the investment later declines to $5. Some time after this decline, the corporation announces a restatement of an accounting error. The investor's shares remain at $5.

The investor sues, pointing to the sharp drop in the value of his stock and alleging that the company's earlier accounting misstatement constituted fraud on the market. But can the plaintiff's loss actually be attributed to the corporation's alleged accounting fraud? In most circuits, the answer is no, and a securities fraud claim on these facts would be dismissed for a reason that any first-year law student could explain with ease: an absence of proximate causation.

Whether couched in terms of the defendant's "duty" to the plaintiff or in terms of the "foreseeability" of the particular harm as a result of the defendant's conduct, the common law tort requirement of proximate causation sets limits on recovery as a matter of public policy.

In the Private Securities Litigation Reform Act of 1995, Congress expressly adopted the then-prevailing view in the federal circuit courts that loss causation is a separate and unique element of any securities fraud claim. The PSLRA requires plaintiffs to prove that the defendant's act or omission "caused the loss for which the plaintiff seeks to recover damages." Congress added this requirement specifically to increase the plaintiff's pleading burden in order to deter what legislators believed was an increasing trend in unmeritorious securities fraud claims.

The 3rd, 7th, and 11th circuits have already read this simple and efficient pleading requirement to mean that the defendant's conduct must be a proximate cause of the plaintiff's loss. And that interpretation received a ringing endorsement from the U.S. Court of Appeals for the 2nd Circuit on Jan. 20 as the court affirmed the decision of the late Judge Milton Pollack in Lentell v. Merrill Lynch.

In the Merrill Lynch case, a class of investors in once high-flying Internet startups brought suit for losses suffered after the "irrational exuberance" of the late 1990s diminished and the Internet bubble burst. Eager to find someone to blame for their losses, the plaintiffs filed suit against Merrill Lynch claiming the company deliberately issued falsely positive recommendations in its analyst reports [this despite the fact that the plaintiffs had not even seen a copy of Merrill's reports]. The 2nd Circuit rejected the plaintiffs' construction of the loss causation requirement and held that they failed "to account for the price-volatility risk inherent in the stocks they chose to buy" or to plead any other facts showing that "it was defendant's fraud -- rather than other salient factors -- that proximately caused [their] loss."

FRIVOLOUS CLAIMS

The problem is that securities fraud litigation imposes an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing businesses billions of dollars in settlements every year. Recent studies conclude that, over a five-year period, the average public corporation faces a 9 percent probability of facing at least one securities class action.

Yet despite congressional efforts at reform [first in the PSLRA and then in the Securities Litigation Uniform Standards Act of 1998], the number of securities class actions has not declined. Quite the opposite, in fact, has occurred: In the first six years after the enactment of the PSLRA, the mean number of securities fraud suits rose by an astonishing 32 percent according to one law review article. Another study concluded that, since the enactment of the PSLRA, public companies face a nearly 60 percent greater chance of being sued by shareholders. And the dismissal rate of securities fraud suits between 1996 and 2003 averaged only 8.4 percent.

As Rep. Anna Eshoo [D-Calif.] put it back in 1995, "Businesses in my region place themselves in one of two categories: those who have been sued for securities fraud and those that will be."

One explanation for this trend is that securities fraud class actions are fundamentally different from other types of commercial litigation: Because the amount of damages demanded can be so great, corporations confront the reality that one bad jury verdict could mean bankruptcy. That sobering prospect encourages many responsible corporate fiduciaries to forgo the adversarial process, settling even meritless suits to avoid the risk of financial oblivion. Since the PSLRA's passage, more than 2,000 securities fraud cases have been filed in federal court, yet defendants have taken less than 1 percent to trial. So great is the pressure to settle that in 2004 one defendant agreed to settle a pending class action for $300 million even after the suit was dismissed by the trial court.

The resulting drain on the American economy is substantial. In the last four years alone, securities class action settlements have exceeded $2 billion per year.

LAWYER-DRIVEN MACHINATIONS?

While plaintiffs attorneys have a strong financial incentive to bring even meritless suits if there's a chance they will settle, and defendants have a strong incentive to settle them, neither has a particularly strong incentive to protect class members. Once the scope of the settlement fund is determined, defendants usually have no particular concern how that fund is allocated between shareholders and plaintiffs counsel. And with the threat of adversarial scrutiny from the defendant largely abated, plaintiffs counsel has free rein to seek [and little reason not to try to grab] as large a slice of the settlement fund as possible.

The 3rd Circuit has put the problem this way: Settlement hearings frequently devolve into "pep rallies" in which no party questions the fairness of the settlement and "judges no longer have the full benefit of the adversarial process."

The result is that securities fraud class actions can end up not only harming the company but also failing to help the supposedly wronged shareholders.

FROM BAD TO WORSE

Given the plain meaning of the PSLRA, the legislative history, the scholarship, and the decisions of the 2nd, 3rd, 7th, and 11th circuits, Dura Pharmaceuticals v. Broudo seems like it should be an easy case for the Supreme Court.

On Feb. 24, 1998, Dura announced a revenue shortfall. By the next day, shares in Dura had dropped from $39.125 to $20.75 for a one-day loss of 47 percent. More than eight months later, on Nov. 3, 1998, Dura announced for the first time that the Food and Drug Administration had declined to approve its Albuterol Spiros asthma device. Nonetheless, Dura shares fell only slightly after this announcement. Share prices initially dropped from $12.375 to $9.75, but, within 12 trading days, they had recovered to $12.438, ultimately climbing back to $14 within 90 days. A claim of fraud on the market was brought on behalf of Dura investors, who allege that Dura knew about the possibility that the FDA might not approve Albuterol Spiros in advance and failed to disclose it in Securities and Exchange Commission filings.

Seeking to boost their recovery, the class action plaintiffs never alleged damages based on the brief $2.625 stock price dip after the Nov. 3 disclosure of the supposed fraud. Rather, they demanded recovery based on the much more significant Feb. 24 decline of almost $19. In other words, the plaintiffs sought damages based on a decline in share value that occurred nine months before the disclosure of the alleged fraud.

The facts were as simple, and seemingly insufficient, as if the unfortunate Mrs. Palsgraf had filed suit for a headache she developed before ever leaving for the train station. The District Court agreed and dismissed the action. But the 9th Circuit saw things differently, finding the loss causation requirement satisfied where the plaintiffs "have shown that the price on the date of purchase was inflated because of the misrepresentation."

The economic implications of the 9th Circuit's decision are staggering. Rather than holding companies liable for the damage they inflict on their shareholders as reflected by an actual market decline, the 9th Circuit's rule permits liability to be found and damages to be awarded even when the plaintiff can point to no material

market reaction to a disclosure of alleged fraud.

The 9th Circuit decision would deny courts an important means for weeding out at the pleading stage lawsuits where the alleged fraud had no empirical effect on share price, and thus imposed no demonstrable harm on class members. The decision thus adds fuel to a fire in which virtually every case is settled, and only the lawyers truly win.

A SKEPTICAL SUPREME COURT

Accepting the request of the solicitor general, the Supreme Court granted certiorari to determine whether the 9th Circuit's holding meets the standards established by the PSLRA.

The questions posed by the justices at oral argument earlier this month suggest a fundamental disagreement with the 9th Circuit's logic. Justice Ruth Bader Ginsburg asked: "How could you possibly hook up your loss to the news that comes out later? There is no loss until somehow the bad news comes out." Justice David Souter commented that the plaintiffs' argument "strikes me as an exercise in an inconsistent theory." And Justice Sandra Day O'Connor summed up the problem: "The reason why loss causation is used is because a 'loss' experienced by the plaintiff is 'caused' by the misrepresentation."

These observations demonstrate a sensitivity to the practical impact of the 9th Circuit's decision. By allowing recovery where disclosures do not prompt any stock price decline, the lower court's rule encourages, and in fact depends upon, a return to the use of "junk science": Parties and courts, lacking any empirically verifiable proof of injury, will reach for a grab bag of speculative theories to estimate damages.

Like Daubert v. Merrell Dow Pharmaceuticals Inc. [1993] and its progeny, the loss causation requirement arms courts with a tool to ensure that the legal system compensates fully for empirically confirmable losses, but not for phantom losses where cause-and-effect relationships have not been reliably proved and perhaps cannot be.

Moreover, the 9th Circuit's rule serves to chill investment advice and the free flow of information and the exchange of opinions critical to our capital markets. Without a requirement tying the disclosure of the alleged fraud to a timely market effect, dissatisfied investors will be encouraged to comb through the musings of television investment shows, Internet investment sites and, of course, investment banks, regardless of whether anyone actually listened to them, to find any investment advice proved mistaken by later events and then to sue for damages, claiming that the advice artificially inflated the value of the stock in question.

Such dangers confirm that the 9th Circuit's departure from the essential element of loss causation in claims for fraud is not only doctrinally inconsistent with basic common law tort pleading elements but also bad public policy.

To be sure, the rising tide of meritless securities fraud claims won't be stemmed in a single decision. The Supreme Court, however, has a unique opportunity to apply the undisputable principles of common law and the clear intent of the legislature to articulate a uniform standard for pleading securities fraud claims that will protect true investor loss due to fraud without damaging our national economy. Sometimes

easy answers are the best solution to easy cases.

Neil M. **Gorsuch** is a partner in D.C.'s Kellogg, Huber, Hansen, Todd, Evans & Figel. He is a former law clerk to Justices Byron White and Anthony Kennedy. Paul B. Matey is an associate at the firm. They filed an amicus brief in Dura Pharmaceuticals on behalf of the U.S. Chamber of Commerce.

THE WALL STREET JOURNAL.

Rule of Law: The Constitutional Case for Term Limits

Gorsuch, Neil, *Guzman, Michael*. **Wall Street Journal**. (Eastern edition). New York, N.Y.: Nov 4, 1992. pg. A15

Voters in 14 states yesterday had a unique opportunity to send a message of change. In addition to electing a president and members of Congress, they also decided whether to limit the terms their congressional representatives may serve.

While the results are not known at this writing, it's clear any successful term limit will face a legal challenge from incumbents loath to yield their seats. Indeed, House Speaker Tom Foley has said that he will carry the case against term limits to the Supreme Court. Term limits, he insists, are unconstitutional: "No, none, no legal case can be made for them."

We beg to differ. An excellent legal case can in fact be made for the constitutionality of term limits. The crucial constitutional point is that term limits are similar to other election regulations that courts have approved.

Most of the term limit proposals on the ballot yesterday do nothing more than restrict a long-term incumbent's access to the ballot. Rather than flatly forbidding an incumbent who has served more than the allowed number of terms from running again, most simply deny him a spot on the printed ballot for a period of four years. During this period, an incumbent may wage a write-in candidacy and, of course, retain his seat if he wins. (Three current members of Congress -- Rep. Ron Packard, Rep. Joe Skeen and Sen. Strom Thurmond -- won their seats as write-ins.)

While forcing an incumbent to run a write-in campaign significantly hurts his chances for re-election, it does not prevent him from running. Many ballot-access regulations have equally severe consequences for aspiring candidates, and the courts have upheld them.

The Constitution gives states clear authority to impose ballot-access rules. Article I, Section 4 specifically empowers states to regulate the "manner" of congressional elections. States have consistently used this authority to enact comprehensive procedures for gaining access to the ballot. These state-enacted "manner regulations" have survived a variety of legal challenges.

In Storer v. Brown (1974), for example, the Supreme Court considered a California regulation denying ballot access to any independent candidate who had been a registered member of a political party within the past year. Although the rule effectively required two congressional candidates to wait a full term before they could obtain a spot on the ballot -- much as a term limit would compel a long-term incumbent to wait two terms -- the court easily approved it.

Likewise, a district court approved the Pennsylvania ballot-access law that forced Rep. Lawrence Williams to sit out a term. When Mr. Williams lost the Republican primary in May 1974, he tried to secure a place on the November ballot as an independent, but a state rule precluded any primary loser from the general election ballot. Mr. Williams fought the regulation in court without success.

The Supreme Court has consistently upheld manner regulations at least as severe as term limits. In Davis v. Bandemer (1986), the court approved virtually all state political gerrymandering schemesno matter how hard on individual candidates. It did so despite the fact that state legislatures often draw wildly contorted district lines specifically to deny certain individuals any realistic hope of winning, and despite the fact that these lines often remain in place for 10 years or more until the next census and redistricting.

A rarely discussed constitutional detail also gives courts little incentive to invalidate term limits. Although Article I authorizes states to regulate congressional elections, it also authorizes Congress to override any manner regulation by a simple majority vote. Why then, a court might wonder, should it protect incumbents from their constituents when incumbents have in hand the power to protect themselves?

Opponents of term limits argue that term limits are not ballot-access regulations but qualifications for office.

This is an attempt to place term limits in a different legal category. The Constitution lists three qualifications for members of Congress: He must be of a requisite age, a U.S. citizen for an established period and an inhabitant of the state he represents. Opponents say term limits effectively add a fourth qualification: namely, that no candidate may be a long-term incumbent.

If viewed as a qualification, a term limit would almost certainly be unconstitutional. The Supreme Court in Powell v. McCormack (1969) concluded that Congress may not add to the established qualifications. In that case, the House had refused to seat Adam Clayton Powell Jr. citing his alleged ethical improprieties. The court, however, ordered the House to seat Powell, arguing that if Congress could set its own qualifications for membership it might use those powers to exclude duly elected representatives for any number of politically motivated reasons.

But the attempt to label term limits as "qualifications" overlooks the fact that the regulation at issue in Powell flatly banned an elected representative from office. Term limits leave incumbents free to wage write-in campaigns and to regain a ballot spot after a few years.

More important, the Supreme Court has already rejected the argument that state ballot-access regulations are really qualifications. In Storer, Justice Byron White dismissed that argument as "wholly without merit." Even Justice William Brennan's dissent in that case, which emphasized the "impossible burden" California had placed on independent candidates, never suggested that the ballot-access procedures at issue constituted qualifications.

Indeed, as both Storer and Williams show, judges have been reluctant to view ballot-access regulations as qualifications. They sense correctly that they would be stepping into a legal morass. There are a huge number of ballot-access rules, and a clever lawyer can argue that any of them creates some sort of qualification. Even the simple requirement that an independent candidate gather a certain number of signatures before being included on the ballot -- a requisite in nearly every state -- could be described as imposing a fourth qualification that he demonstrate quantifiable popular support.

Finally, the attempt to label a term limit as a qualification ignores constitutional history. The Framers fixed the three exclusive qualifications because they feared that Congress might enact a host of invidious membership rules designed to ensconce some groups on Capitol Hill and bar others. Term limits pose none of these dangers. They are motivated by the same ideals that motivated the Framers -- a desire to secure broad political participation and promote a representative legislature.

Mr. Gorsuch is a Marshall Scholar at Oxford. Mr. Guzman is a legal assistant at the Iran-U.S. Claims Tribunal in The Hague.

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THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

PERSON LOCATOR - P-CNSR

Name: GORSUCH, NEIL M (MALE)

Additional Names:
GORSUCH, MARIE L (FEMALE)

Spouse Name: GORSUCH, LOUISE M (FEMALE)

Address:

(b)(6)

Address Type: HOUSE NUMBER & STREET NAME
Address Created: 1997

Birthdate: (b)(6)

Telephone: (b)(6)

Telephone Type: VOICE LINE

Presidential Personnel, White House Office of

Bullock, Katja – Candidate Files – US Judges

Gorsuch, Neil

Stone, Jonathan D.

From: bounce-222583-995940@list.whitehouse.gov on behalf of White House Press Releases [Press.Releases@WhiteHouse.Gov]

Sent: Wednesday, May 10, 2006 4:17 PM

To: Stone, Jonathan D.

Subject: NOMINATION SENT TO THE SENATE

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 10, 2006

NOMINATION SENT TO THE SENATE:

Neil M. Gorsuch, of Colorado, to be United States Circuit Judge
for the Tenth Circuit, vice David M. Ebel, retired.

# # #

Name: Gorsuch, [redacted] Neil

Agency or Dept/Position: DOJ- Principal Deputy Associate Attorney General

EOD Date: 4/12/05

New Duties: _____

NOTES: _____

GS: _____ to GS: _____ 7.6 % ↑

SES: 149,200 to SES: 160,608

Approve _____ Deny _____ _____ _____

Office of Presidential Personnel Date

Request for SES Noncareer or Limited Appointment Authority

Part A - Agency Information

1. Agency name	2. Date of request *(mm,dd,yyyy)*	3. Date received at OPM *(OPM use only)*
Department of Justice	12/09/2005	

4. Agency point of contact	Telephone number	FAX number	E-mail
Jeanne N. Raymos	(202) 616-3721	(202) 514-0673	Jeanne.Raymos@usdoj.gov

5.

U.S. Office of Personnel Management
Office of Executive Resources Management
1900 E Street NW, Room 6484
Washington, DC 20415-0001

Attention Bill Collins
FAX number is (202) 606-2126

6. Request(s) for:

- ☐ New noncareer appointment
- ☐ Reassign a noncareer appointee
- ☐ Limited term appointment
  Requested duration: ☐ Months_____ ☐ Days_____
- ☐ Limited emergency appointment (not to exceed 18 months)
- ☐ Extension of limited appointment
  Requested duration: ☐ Months_____ ☐ Days_____
- ☐ Change in title (show current title below; show new title in 10a.)
  Pay adjustment from $149,200 plus $11,408 to $160,608
- ☑ Other (specify on supplemental sheet, e.g. SES allocation)

7. Name of candidate	8. EIS case number	9. Position number
Neil M. Gorsuch (date last pay adjustment: 6/12/05)		DJES-1151

10a. Position title	10b. Organization	10c. Office	11. Recruited from
Principal Deputy Associate Attorney General	Department of Justice	OASG	

Endorsement Statement

I endorse the above request made to the Office of Personnel Management. I certify that the position is a General position and certify that the candidate meets the professional/technical, executive and managerial qualifications for this position.

12. Department/Agency head name	13. Department/Agency head signature *(or designee)*	14. Date signed
Alberto R. Gonzales		12-15-05

Part B - Agency White House Liaison

1. Agency White House Liaison name	2. Agency White House Liaison signature	3. Date	4. Telephone
Jan Williams		12/09/05	(202) 514-2927

Part C - OPM Use Only

1. ☐ Your request for a new noncareer appointment authority, reassignment or change is:
   ☐ Your request for a limited term or limited emergency appointment authority for the duration of_____ is:
   ☐ Your request for __ temporary space allocation is:

- ☐ Approved
- ☐ Approved with modification →
- ☐ Disapproved
- ☐ Returned without action

Modification

2a. Number of noncareer allocations, if approved →	2b. Percent of SES space allocation → %

3. OPM White House Liaison signature	4. Date

5. Signature of OPM approving official	6. Title of OPM approving official	7. Date signed
	Chief of Staff, OPM	

THE WHITE HOUSE
WASHINGTON

PPO Non-Career Pay Adjustment Form
IN HOUSE USE ONLY

TO: _____, ASSOC DIR, PPO DATE SENT: _____

FROM: _____ PHONE: _____ DATE IN: _____

CANDIDATE: Gorsuch, Neil M. (Last, First, Middle)

POSITION TITLE: Principal Deputy Associate Attorney General GRADE: _____

DEPT/AGENCY: U.S. DoJ SUPERVISOR: Robert McCallum

NEW: _____ AMENDMENT: _____ RE-ESTABLISHMENT: _____

UPGRADE: _____ AGENCY TRANSFER: _____

CURRENT ADDRESS: 950 Pennsylvania Ave, N.W. RM 5706 PHONE: 202 305 1434

CITY: Washington STATE: DC ZIP: 20530

APPLICANT'S SIGNATURE: [signature] DATE: 12-14-05

A completed, political and personal resume with salary history, position description and OPM 1019/1652 form must be included for White House clearance to begin.

NEIL M. GORSUCH

(b)(6)
office: (202) 305-1434
home: (b)(6)
(b)(6)

EXPERIENCE

UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.
Principal Deputy to the Associate Attorney General, June 2005-present.
Assist the Department's number three officer in managing the Justice Department's civil justice components, including the Antitrust, Tax, Civil, Civil Rights, and Environment and Natural Resources divisions. Responsible for advising the Attorney General and Associate Attorney General on civil justice, federal and local law enforcement, and public safety matters, including the oversight and management of the Department's terrorism-related litigation.

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, Washington, D.C.
Partner, 1998-May 2005; Associate, 1995-1997.

Representative matters include: Conwood v. UST (trial and appeal leading to the largest affirmed private judgment in the history of federal antitrust laws, as of 2002); In re Qwest Communications International, Inc. Securities Litigation (represented former chairman and other directors in securities fraud suits and federal investigations); Teachers Retirement System of Louisiana v. Regal Entertainment (defeated derivative suit challenging a $710 million restructuring); Twombly v. SBC Communications (defeated a putative nationwide antitrust class action); Z-Tel Communications v. SBC Communications (defended SBC in an antitrust and RICO suit brought by a rival); AutoMall v. American Express (lead trial counsel for defendant American Express in a $78 million dispute); NCRIC, Inc. v. Columbia Hospital for Women (lead trial counsel for defendant hospital in which claims against it were rejected and the hospital won an $18.2 million counterclaim judgment); Zachair, Ltd. v. Driggs Corp. (lead trial and appellate counsel for plaintiff in $4 million abuse of process and tortious interference suit); Ashley v. Coopers & Lybrand (represented founder of Laura Ashley in a fraud suit against his former management consulting firm; settled during trial on undisclosed terms); Goff v. Bickerstaff & Ford Motor Company (RICO claims against client dismissed at trial); Dura Pharmaceuticals v. Broudo (represented U.S. Chamber of Commerce in securities fraud dispute before the U.S. Supreme Court); Quill v. Vacco and Washington v. Glucksberg (represented amicus American Hospital Association in U.S. Supreme Court right-to-die cases); Felzen v. ADM and Devlin v. Scardellitti (represented Council for Institutional Investors in U.S. Supreme Court cases concerning the rights of objecting shareholders in class action and derivative suit settlements); Lentell v. Merrill Lynch (securities fraud dispute before the Second Circuit).

SUPREME COURT OF THE UNITED STATES, Washington D.C.
Law clerk to Justice Byron R. White (Retired), and Justice Anthony M. Kennedy, 1993-94.

UNITED STATES COURT OF APPEALS, D.C. CIRCUIT, Washington, D.C.
Law clerk to U.S. Circuit Judge David B. Sentelle, 1991-92.

EDUCATION

OXFORD UNIVERSITY, Oxford, England.
D.Phil. in legal philosophy.
British Marshall Scholar.
Dissertation to be published in forthcoming book by Princeton Univ. Press.

HARVARD LAW SCHOOL, Cambridge, MA.
J.D. 1991 *cum laude*.
Harry S. Truman scholar (100 scholars chosen annually by U.S. Government)
Harvard Journal of Law & Public Policy, Senior Editor.
Head Teaching Fellow, political philosophy course at Harvard College.
Represented indigent criminal defendants in Boston courts.

COLUMBIA UNIVERSITY, New York, N.Y.
B.A. 1988, Political Science, with honors (G.P.A. 3.95).
Phi Beta Kappa, early selection (top 1% of class).
Elected Class Marshal by faculty.
Nachems senior honor society.
Graduated in three years.
Founded and edited student newspaper.

PUBLICATIONS The Future of Assisted Suicide and Euthanasia in America (book forthcoming from Princeton University Press, 2006); Ensuring Class Action Fairness, Federal Trade Commission Class Action Workshop (Sept. 2004); Justice White and Judicial Excellence, distributed nationally by UPI (May 2002); The Legalization of Assisted Suicide and the Law of Unintended Consequences, 2004 Wisconsin Law Review 1347; The Right to Assisted Suicide and Euthanasia, 23 Harvard Journal of Law and Public Policy 599 (2000); Liberals and Lawsuits, National Review Online (Feb. 2005). Co-author: No Loss, No Gain, The Legal Times (2005) (concerning securities fraud law suits); Settlements in Securities Fraud Class Actions: Improving Investor Protections, Washington Legal Foundation (April 2005) and reprinted in Andrews Class Action Litigation Reporter (August 2005); Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limits, 20 Hofstra Law Review 341 (1991) and reprinted in Policy Analysis on Term Limits, Cato Institute Policy Analysis No. 178 (1992); The Constitutional Case for Term Limits, Wall Street Journal (Nov. 1992).

SPEECHES Speeches include before: Washington, D.C. Bar Association, Wisconsin Bar Association, Federal Trade Commission workshop, National White Collar Crime Center, American Association for the Advancement of Science, Common Good, Prime Time Radio, British Marshall Scholarship Commission, various gatherings of U.S. Department of Justice employees.

ASSOCIATIONS Term Member, Council on Foreign Relations; Harry S. Truman Scholarship 2006 Selection Committee; Columbia University Alumni Representative Committee; American Bar Association, Litigation and Antitrust sections. National high school debate champion. Listed in Who's Who in America, Who's Who in American Law.

PERSONAL Married; two daughters.